

Supreme Court, U.S.
FILED

No. 83-128

23 1983

ALEXANDER L. STEVENS
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM GOUVEIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

(List of Counsel on Inside Cover)

PETITION FOR WRIT OF CERTIORARI FILED
JULY 25, 1983
CERTIORARI GRANTED OCTOBER 17, 1983

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Chronological List of Relevant Docket Entries—
Gouveia, Reynoso, Segura, Ramirez

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES v. ADOLPHO REYNOSO,
ROBERT RAMIREZ, WILLIAM GOUVEIA, AND
PHILIP SEGURA,

CR-80-535-01-MML, CR-80-535-02-MML,
CR-80-535-03-MML, CR-80-535-05-MML

DATE	PROCEEDINGS
6.17.80	Indictment filed
7.14.80	Arraignment; attorneys appointed for defendants
7.21.80	Arraignment of defendants Reynoso, Ramirez, Segura; new attorney appointed for defendant Segura; trial date set for 9.16.80
7.22.80	Arraignment of defendant Gouveia
8.18.80	Defendants' motion for discovery granted in part and denied in part
9.4.80	Order granting application of defendant Ramirez for appointment of investigator; order granting application of defendant Gouveia for appoint- ment of fingerprint analyst
9.8.80	Order denying defendants' motion to dismiss in- dictment; order denying motion for continuance
9.9.80	Order re making certain Brady material available to defense counsel
9.15.80	Order granting application of defendant Gouveia for appointment of investigator
9.16.80	Trial begins
9.24.80	Defendants' motion for judgment of acquittal denied
10.2.80	Jury begins deliberations
10.6.80	Jury acquits co-defendant Flores; jury acquits de- fendant Reynoso on weapons charge
10.9.80	Mistrial declared; jury unable to reach verdict
11.3.80	Trial date set for 2.17.81
1.5.81 through 1.29.81	Various orders requiring appearance and transpor- tation of inmate witnesses
2.2.81	Government's motion for continuance denied

DATE	PROCEEDINGS
2.17.81	Retrial begins
2.24.81	Order granting application of defendant Gouveia for appointment of investigator
3.11.81	Jury begins deliberations
3.13.81	Jury returns verdicts of guilty as to all defendants
4.23.81	Motion for new trial denied; defendants sentenced; notices of appeal filed by defendants Ramirez, Gouveia, and Segura
4.27.81	Notice of appeal filed by defendant Reynoso

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Gouveia, William	No. 81-1271
Ramirez Robert	No. 81-1272
Segura, Philip	No. 81-1273
Reynoso, Adolpho	No. 81-1274

Date	Proceedings
9.15.82	Case ordered heard by an en banc panel
11.12.82	Case consolidated with <i>Mills</i> and <i>Pierce</i>
12.15.82	Oral argument
4.26.83	En banc court of appeals reverses judgments of district court and remands with instructions to dismiss the indictments
5.16.83	Court of appeals issues stay of mandate
10.17.83	Order of Supreme Court granting petition for a writ of certiorari

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

March 1980 Grand Jury

No. CR 80-535

Filed: Jun. 17, 1980

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ADOLPHO REYNOSO, AKA "CHAMP," ROBERT RAMIREZ, AKA
"BLACK BOBBY," WILLIAM GOUVEIA, AKA "WILLIE BOBO,"
PEDRO FLORES, AKA "BLACK PETE," PHILIP SEGURA, AKA
"BLACK," STEVEN KINARD, DEFENDANTS

INDICTMENT

[18 U.S.C. § 1117: Conspiracy, §1111: Murder; §1792:
Conveyance of Weapon; §2(a): Aiding and Abetting; §3:
Accessory after the Fact]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §1117]

On or about November 1, 1978 and continuing until November 11, 1978, within the Central District of California, defendant ADOLPHO REYNOSO, also known as "Champ," defendant ROBERT RAMIREZ, also known as "Black Bobby," defendant WILLIAM GOUVEIA, also known as "Willie Bobo," defendant PEDRO FLORES, also known as "Black Pete," defendant PHILIP SEGURA, also known as "Black," and defendant STEVEN KINARD (collectively referred to as "the conspirators"), knowingly and willfully conspired with each other to commit offenses in violation of the laws of the United States as follows:

1. It was part of the conspiracy that the conspirators willfully, deliberately, maliciously and with premeditation and malice aforethought would murder a human being, Thomas Trejo, at the Federal Correctional Institution, Lompoc, California, within the special maritime and terri-

torial jurisdiction of the United States, in violation of Title 18, United States Code, Section 1111.

2. It was a further part of the conspiracy that the conspirators would convey from place to place within the Federal Correctional Institution knives designed to kill an inmate, Thomas Trejo, in violation of Title 18, United States Code, Section 1792.

MEANS OF THE CONSPIRACY

The objects of the conspiracy would be and were accomplished as follows:

1. ADOLPHO REYNOSO would and did direct the conspirators to begin planning the murder of Thomas Trejo.

2. ADOLPHO REYNOSO would and did direct ROBERT RAMIREZ to obtain knives to murder Thomas Trejo.

3. ROBERT RAMIREZ would and did direct PEDRO FLORES to obtain the knives from the Federal Correctional Institution metal workshop.

4. PEDRO FLORES would and did bring into the Federal Correctional Institution at Lompoc, California knives intended to murder Thomas Trejo.

5. ADOLPHO REYNOSO, ROBERT RAMIREZ and PHILIP SEGURA would and did stab Thomas Trejo.

6. WILLIAM GOUVEIA and STEVEN KINARD would and did dispose of the knives used to murder Thomas Trejo.

To accomplish the objects of the conspiracy the conspirators committed numerous overt acts within the Central District of California including the following:

1. On or about November 1, 1978 ADOLPHO REYNOSO told ROBERT RAMIREZ, and PEDRO FLORES that Thomas Trejo "had to go."

2. On or about November 1, 1978 ADOLPHO REYNOSO told ROBERT RAMIREZ to obtain knives.

3. On or about November 1, 1978 ADOLPHO REYNOSO told ROBERT FLORES to pick up knives from ROBERT RAMIREZ.

4. On or about November 2, 1978 PEDRO FLORES buried knives in the prison yard at the Federal Correctional Institution, Lompoc, California.

5. On or about November 4, 1978 PEDRO FLORES brought knives into the "J" Unit Dormitory at the Federal Correctional Institution, Lompoc, California.

6. On or about November 11, 1978 PEDRO FLORES handed ADOLPHO REYNOSO a knife.

7. On or about November 11, 1978 ADOLPHO REYNOSO, PHILIP SEGURA and ROBERT RAMIREZ stabbed Thomas Trejo to death.

8. On or about November 11, 1978 STEVEN KINARD told Willard Taylor to "get rid" of the knives.

9. On or about November 11, 1978 WILLIAM GOUVEIA asked Willard Taylor to dispose of the knives.

10. On or about November 11, 1978 STEVEN KINARD handed knives to Willard Taylor.

COUNT TWO

[18 U.S.C. §§ 1111, 2(a), 3]

On or about November 11, 1978, at the Federal Correctional Institution at Lompoc, California, within the Central District of California, within the special maritime and territorial jurisdiction of the United States, defendants ADOLPHO REYNOSO, ROBERT RAMIREZ, and PHILIP SEGURA aided and abetted by WILLIAM GOUVEIA, and PEDRO FLORES, willfully, deliberately, maliciously and with premeditation and malice aforethought murdered Thomas Trejo.

STEVEN KINARD, knowing that ADOLPHO REYNOSO, ROBERT RAMIREZ, and PHILIP SEGURA, aided and abetted by WILLIAM GOUVEIA and PEDRO FLORES committed an offense against the United States assisted these individuals in order to hinder or prevent their apprehension.

COUNT THREE

[18 U.S.C. § 1792]

⁴ On or about November 4, 1978, PEDRO FLORES, within the Federal Correctional Institution at Lompoc, California in the Central District of California, conveyed from place to place in the institution, a knife designed to injure an inmate of the institution.

COUNT FOUR**[18 U.S.C. § 1792]**

On or about November 10, 1978, PEDRO FLORES, within the Federal Correctional Institution at Lompoc, California, in the Central District of California, conveyed from place to place in the institution, a knife designed to injure an inmate of the institution.

COUNT FIVE**[18 U.S.C. § 1792]**

On or about November 10, 1978, ADOLPHO REYNOSO, within the Federal Correctional Institution at Lompoc, California, in the Central District of California, conveyed from place to place in the institution, a knife designed to injure an inmate of the institution.

COUNT SIX**[18 U.S.C. § 1792]**

On or about November 11, 1978, STEVEN KINARD, within the Federal Correctional Institution at Lompoc, California, in the Central District of California, conveyed from place to place in the institution, a knife designed to injure an inmate of the institution.

A TRUE BILL

/s/

Foreperson

/s/

ANDREA SHERIDAN ORDIN
United States Attorney

DECLARATION OF PEDRO FLORES

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, PEDRO FLORES, declare as follows:

1. I am the defendant in the above-captioned case.

2. On November 11, 1978, I was confined in the administrative detention unit at Lompoc Federal Correctional Institution. I was released into the general prison population on or about November 22, 1978. On December 4, 1978, I was returned to solitary confinement in the ADU. On or about March 15, 1979, I was released from solitary confinement. During April of 1979, I was transferred to the Federal Correctional Institution in Atlanta, Georgia.

3. On December 15, 1978, and December 21, 1978, I appeared before prison administrative disciplinary committees. I asked for counsel and was denied this right. The charge at the hearings was involvement in the murder of Thomas Trejo. I asked to have Vernel Phillips, a prison guard, as a witness. I was told he no longer worked for the institution. I was found guilty of the murder.

4. At every occasion where it could have been relevant, I asked for the right to have an attorney assist me in defending against the charge of complicity in the murder of Thomas Trejo. I was consistently denied the right by prison officials.

5. During the above-mentioned solitary confinement, I was not allowed to communicate with other prisoners. I was denied access to the regular prison law library. I am informed and believe, based upon my knowledge of Lompoc, that my reputation was damaged and my physical safety was endangered by my solitary confinement and by the finding of the disciplinary committees that I was involved in the Trejo killing. When a prisoner is confined to solitary for a murder, the inmates who were friends of the victim often assume the person confined is guilty and plan revenge. Other inmates, acquainted with the pressures placed on an inmate in solitary, assume that he has become an informant. These and other factors involved in solitary

confinement cause severe threats to the safety and reputation of a person so confined.

6. The period of solitary confinement just mentioned and my transfer to Atlanta prevented me from doing anything to aid in my own defense against the charge of murder. I am apparently accused of transporting knives through the prison over a period of several days. At the time the incident occurred, with the assistance of a lawyer, it would have been possible to find witnesses who remembered where I was at all times of the days in question. With a passage of close to two years by the time of my scheduled trial, finding enough witnesses in or out of custody will be a difficult task. This is even more true due to the fact that I knew many inmates only by nicknames. Now that many of them have been released or transferred to other institutions, prison records would be of no help in locating them, as the prisoners are not listed by nicknames.

7. I am unaware of any other charge besides the murder of Thomas Trejo that could have caused my solitary confinement and my transfer to Atlanta.

8. I have provided my counsel, Michael A. Brush, with some names of potential witnesses, but many of the details of the days in question between November 4, 1978, and November 11, 1978, have faded from my memory, including the names and nicknames of inmate witnesses. I was unable to make adequate notes of the details of my whereabouts during the week between November 4 and November 11, 1978, due to my solitary confinement and my lack of knowledge of the specific details of the charges against me.

9. I am also informed and believe that any relevant physical evidence I might have possessed is now gone in the process of the solitary confinement and the Atlanta transfer and the transfer back to California.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of August, 1980, at Los Angeles, California.

/s/ _____
PEDRO FLORES

UNITED STATES GOVERNMENT

Memorandum

TO : Detention Unit Supervisor

F. Hunt

FROM : Correctional Supervisor

SUBJECT: Administrative Detention

DATE: 11 Nov 78

FLORES, Pedro Reg. No. 35824-136(J) Unit: J
 Is being placed in administrative detention for the following reason(s):

- Pending a hearing for a violation of institution rules or regulations.
- Pending an investigation of a possible violation of an institution rule, but where charges have yet to be lodged.
- Pending investigation or trial for crimes committed in the institution.
- An inmate requests admission to the Administrative Detention area for his own protection.
- An inmate in holdover status awaiting transfer.
- Pending classification.
- Continued presence of this inmate in general population poses a serious threat:
 - to Life
 - himself
 - property
 - other inmates
 - the security of the institution

COMMENTS:

INVESTIGATION

Distribution: Team	<input checked="" type="checkbox"/>
Inmate File	<input checked="" type="checkbox"/>
Inmate	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

EXHIBIT A

FEDERAL BUREAU OF PRISONS

REQUEST FOR ADMINISTRATIVE REMEDY

INSTRUCTIONS:
TYPE OR USE BALL POINT PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT SHEET IN QUADRUPPLICATE.

To: Warden of Institution Regional Director, Bureau of PrisonsFrom: FLORES, Pedro LAST NAME/FIRST, MIDDLE INITIAL 35824-136 REG. NO. Lompoc INSTITUTION

Part A—INMATE REQUEST

I AM PRESENTLY BEING HELD IN ADMINISTRATIVE DETENTION FOR AN INCIDENT THAT OCCURRED NOV. 11, 1978. AND ON THAT DATE I DID NOT LEAVE MY HOUSING UNIT, "J," EXCEPT FOR EARLY MEAL, WHICH WAS APPROXIMATELY 3:30 A.M. THE HOUSING OFFICER THAT DAY, MR. PHILLIPS, CAN SURELY ATTEST TO THAT FACT.

NOV. 14, 1978

DATE

Pedro Flores

SIGNATURE OF REQUESTOR

Part B—RESPONSE

You were placed in administrative detention in accordance with Lompoc policy 7400.4-239 dtd. 9-5-75 -Inmate Discipline. An inmate may be placed in ADU pending investigation or trial for a criminal act. Due to the seriousness of the offense for which you were under investigation, it was not possible to complete this investigation under the normal 24 hr. period. Your record file shows you received a copy of memo dtd. 11-11-78 re: Adm. Detention, prepared by Fred Munz, CS. That memo advised you were placed in detention unit pending investigation. At the conclusion of the investigation, you were released to the general population, therefore, your request for relief is denied.

12-5-78

DATE

Edna Aguilar K

DEPARTMENT HEAD OR REPRESENTATIVE

J. J. Murphy

WARDEN, ASSOCIATE OR REGIONAL DIRECTOR

ORIGINAL: TO BE RETURNED TO THE OFFENDER AFTER COMPLETION.

Part C—RECEIPT

Return to: Flores, Pedro
LAST NAME, FIRST, MIDDLE INITIAL35824-136(J)
REG. NO.Lompoc
INSTITUTION

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:

Request for VR, dated 11/11/78 to be expunged11/20/78

DATE

Edith K. Daughton

RECIPIENT'S SIGNATURE (AFF MEMBER)

UNITED STATES GOVERNMENT

Mémo

TO : Detention Unit Supervisor

FROM : J. Haupt
Correctional Supervisor

SUBJECT: Administrative Services

1978: Dec. 4, 1978

Flores, Pedro Reg. No. 35824-136 Unit: J-unit
is being placed in administrative detention for the following reason(s):

- Pending a hearing for a violation of institution rules or regulations.

Pending an investigation of a possible violation of an institution rule, but where charges have yet to be lodged.

Pending investigation or trial for crimes committed in the institution.

An inmate requests admission to the Administrative Detention area for his own protection.

An inmate in holdover status awaiting transfer.

Pending classification.

Continued presence of this inmate in general population poses a serious threat:

<input type="checkbox"/> ----- to Life	<input type="checkbox"/> ----- himself
<input type="checkbox"/> ----- property	<input checked="" type="checkbox"/> ----- other inmates
<input type="checkbox"/> ----- staff members	<input checked="" type="checkbox"/> ----- the security of the institution

COMMENTS:

Investigation.

BUISNESS TEAM

DISCUSSION FROM DR.

Japanese

EXHIBIT C

Buy U.S. Savings Bonds Right! only on the Payroll Savings Plan

DECLARATION OF MICHAEL A. BRUSH
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, MICHAEL A. BRUSH, declare as follows:

1. I am counsel of record for Defendant Pedro Flores in the above-captioned case.

2. My conduct of the defense of Pedro Flores has been hampered by the passage of one year and seven months prior to the filing of the indictment. Some of the factors involved in this interference with my defense of my client are as follows:

3. In conversations with employees of the Federal Correctional Institution at Lompoc, I have learned the following concerning potential witnesses: Steve Broughton was transferred to Terminal Island on June 23, 1980. Tony Palacios has been transferred to the Marion federal prison in Illinois. Willard Taylor has been released from Lompoc and the records show no address or location where he can be reached. Inmates are not listed by nickname, so that all witnesses I have learned of who are identified only by nickname cannot be located through prison records. At the time of the charged offense, my client was in J unit at Lompoc. I was informed by Mary Sue Guthridge, secretary of J unit that no unit census was taken during November, 1978, so that no reconstruction of the J unit inmate population could be accomplished. She also indicated that the average population in J unit is 120. Central records at Lompoc also do not maintain for November, 1978, any record of the inmates indexed by unit. I learned that M unit in which the killing of Thoms Trejo took place was at the time an admission and orientation unit with a high turnover. K unit of relevance to the charges also had about 120 inmates at the time of the charged incident. C unit, also of relevance, may at the time of the offense have been combined with another unit. Among the persons I spoke with in records was Karin Seaberg, a statistical coordinator.

4. At this point, I am totally in the dark as to the times and places my client is alleged to have transported knives

for the murder. The indictment is inconsistent in its allegations. As far as I can tell, it is only the transportation of knives that causes my client to be included in any count of the indictment. Since the government has refused to provide any information that will pin down the specific hours of the day and places involved in the charges against my client, my defense in the light of the great passage of time is greatly hampered.

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of August, 1980, at Santa Monica, California.

/s/ _____
MICHAEL A. BRUSH

DECLARATION OF ADOLPHO REYNOSO

I, ADOLPHO REYNOSO, declare and state as follows:

1. Starting in October 13, 1978, I was an inmate at the Federal Correctional Institution at Lompoc, California confined within the general population at the main facility.

2. On November 11, 1978, I was confined in the Administrative Detention Unit (ADU) at Lompoc Federal Correctional Institution. I was released into the general population on November 22, 1978. On December 4, 1978, I was returned to solitary confinement in the Administrative Detention Unit. I have been held in solitary confinement to the present day.

3. On November 21, 1978, I was interviewed by agents of the FBI. I was never read my constitutional rights by the agents of the FBI. I did, however, request that I be provided with an attorney. I was told by the FBI agents that I didn't need one since I was going to be released the next day. On November 22, 1978, I was released.

4. I was led to believe by my release on November 22, 1978, that I was no longer a suspect in the killing of Thomas Trejo. I therefore, did not concern myself with the particulars of the case. However, on December 4, 1978 without warning I was again incarcerated in solitary confinement at the ADU. I was told that I was being held pending the criminal investigation of the case into the killing of Thomas Trejo.

5. On December 15, 1978 and on December 21, 1978, I appeared before the Prison Administrative Disciplinary Committee. I asked for an attorney and was denied this right. I was advised on December 15, 1978 that I was charged with murder of Thomas Trejo. I asked for an attorney at that time and that right was denied. I asked to have Vernel Phillips, a prison guard, as a witness. I was told that Vernel Phillips was no longer employed with the Federal Correctional Institution at Lompoc. I was not told, however, whether Vernel Phillips was fired, nor given any other reason for his leaving the institution. No witnesses were produced at the hearing. I was not given information as to what if any evidence existed against me. I was found

guilty on December 21, 1978 of being involved in the murder of Thomas Trejo. I gave notice on or about January 1, 1979 of my intent to appeal the decision to the Warden. In that notice, I again asserted that I had a right to an attorney. At every occasion where it could have been conveyed to the prison authorities, I asked for the right to have an attorney to assist me in defending me against the charge of having murdered Thomas Trejo. I was consistently denied the right to an attorney by both prison officials and members of the FBI.

6. There is a significant difference between being in the general prison population and being held in solitary confinement in ADU. A person confined in the general population at Lompoc begins his day at 6:00 AM. When the cell doors are opened for breakfast, an inmate can leave their cells and walk about in the common areas, and go to the dining hall. At approximately 8:00 AM, there is work call, and inmates in the general population go to their assigned jobs, which may include, for example, carpentry, work in the cable shop, or work on the grounds. At noontime, the inmates are called back into the dining hall, and after lunch, returned to their work areas until approximately 4:00 PM. At 4:00 PM, it is required that everybody go back to their cell for the afternoon count. From approximately 4:00 PM until 4:30 PM, each inmate is locked in his individual cell. This 30 minute period is the only time during the entire when the inmates are confined to their individual cells. At approximately 4:30 PM, the cell doors are opened and the call of units to the dining hall begins. After the count, inmates may choose to go to see a movie, or go to a recreation yard for exercise, or go to the gym to exercise or work out. At approximately 8:30 PM, everyone must return their respective units, but inmates are not locked into their individual cells at this time, and may move freely about the unit. At approximately 10:00 PM, inmates are given the option of going to their cells to go to sleep or go into a TV room to watch TV. There are also available to inmates in the general population a variety of educational programs. Also, when you are in the general population, you are permitted to have toiletries, books and other personal items in your cell.

The doors to the cells for prisoners in the general population are solid, with a small window, which affords privacy for the inmate when he is in his cell. Inmates in the general population are also provided excess to telephone room, where they can make telephone calls in private. There is no limited number of calls that can be placed through the system. Also, for the inmates in the general population, visiting hours are from 12:00 PM to 3:30 PM on weekdays and, 8:00 AM to 3:30 PM on weekends. There are no limitations on the amount of time that inmates in the general population may spend with their visitors, and there is an outside area which has been provided for the use prisoners and their families.

7. Solitary confinement in the ADU or the "hole" is entirely different. Inmates in the hole are held in their cell for the entire day, with the exception of a 30 minute break. The cells are approximately 4'×6' in dimension. This 30 minute break is the only period of time during the day when you are permitted to leave your cell. During this time, you may shower or exercise. However, either one or both of these activities must be conduted within the 30 minute period. You are permitted absolutely no contact with prisoners, either during the time you are confined to your cell, or during the 30 minute break. Relief periods are staggered so that only one inmate in ADU at a time is out of the cell. Once every seven days, the guards take you out of your cell into a stoned enclosure outside to exercise for approximately one hour. There is no training equipment in this area, no grass, and no view of access to any other prisoners. The area is entirely concrete, with a concrete floor, surrounded on all sides by concrete walls. This area can get very hot in the summer. Inmates in the hole eat in their cells, and each cell has a toilet. Also, the doors to the cells are comprised of bars, so that there is absolutely no privacy from the guards. Whereas prisoners in the general population are permitted to purchase carpets to put on their floors if they desire, no such privilege is allowed in the hole, and the cement cell floors must remain uncovered. Also, whereas prisoners in the general population are permitted to purchase clothing, toiletries, coffee, and other good at the com-

missary, prisoners in ADU have a restrictive list of goods which they may purchase from the commissary. For example, you must wear kaki clothes issued to you by prison authorities when you are in ADU, and you cannot buy any clothes of your own, or wear any clothes which you previously purchased. Also, you are not permitted to purchase any objects that come in metal or glass containers. Inmates held at the hole are permitted one telephone call per month, and this call must be made in the presence of a counselor, guard, or case manager. Visitation hours are the same as those with the general population, but inmates in the hole are limited to two hours with their visitors. Furthermore, at no time may more than five inmates on ADU be in the visiting area. If more than five ADU inmates are in the visiting area, the first ADU prisoner to have arrived is taken back to his cell, and his visitation period is cut off. ADU prisoners and their families are denied access to the outside portion of the visiting area. In ADU, lights are out between 9:30 PM and 10:00 PM. Finally, inmates at ADU are not permitted to participate in any of the prison's educational, recreational, or work programs, nor are they permitted any television or movie rights of any kind.

8. During my above mentioned solitary confinement, I was not allowed to communicate with any of the prisoners. It is general knowledge within the prison system that when a person is confined to solitary confinement for the murder of another inmate or a person is found to be guilty by the disciplinary hearing, said person is presumed guilty of the crime by other inmates and often other inmates plan revenge. Further, other inmates, acquainted with the pressures placed on the inmate in solitary confinement assume that he has become an informant. These and other factors involve in solitary confinement create threats to the safety and reputation of a person so confined. I was aware of these factors, and was apprehensive as a result thereof.

9. As a result of my solitary confinement, I have been prevented from doing anything to aid in my defense against the charge of murder. I was denied the ability to secure witnesses which might have been useful to me in defense of these charges. At the time that the incident occurred, with-

in a reasonable period of time thereafter, it would have been possible to find witnesses who remembered where I was at all times on the days in questioned. These are the days of November 1, 1978 through November 11, 1978. It has been almost two years since the events of November 11, 1978. Locating witnesses in or out of custody will be an impossible task in view of the fact that I do not know the true name of many inmates and know them only by nicknames or appearance. It must be kept in mind that I was only at the institution approximately a month before I was placed in solitary confinement. Many of these potential witnesses have been released or transferred to other institutions, and since I do not know the true names of these individuals, prison records will be of little help in locating them. The documents I have examined do not list prisoners by nicknames, or even by cell numbers. As can be seen by my statement on November 21, 1978 to the FBI, I did not know even then the names of three persons who I believe will substantiate the fact that I was not involved in the murder of Thomas Trejo. If I had been in the general population after I had been informed that the charges were still pending against me, it would have been possible to have secured the true identity of these three individuals. Further, it would have been possible to have secure the identities of other individuals who could also attest as to my whereabouts on November 11, 1978. Whether or not the FBI made any efforts to secure the identity of these three individuals is not known to me.

10. What makes it even more difficult for me to assist my attorney in preparing a defense is the fact that the locator and unit rosters provided by the government to us pursuant to this court's discovery order do not list the first name of the inmates, do not give the cell number to which the inmates were assigned in respective unit, do not list nicknames, nor does it appear that the unit rosters provided are even for the dates in questioned, that is, the dates of November 11, 1978. For example, the duty roster for "D" unit is dated September 28, 1978. The duty roster for "F" unit is dated September 20, 1978, the roster for "H" unit is dated September 22, 1978, and the unit roster for "J" unit,

the unit I was assigned to, is dated October 3, 1978. I was not even in "J" unit until October 20, 1978. The unit roster for "K" unit is dated October 3, 1978. The duty roster for "L" unit is dated September 27, 1978. These unit rosters are useless to me in attempting to locate individuals who could verify my whereabouts on November 11, 1978. This is important because there were inmates in "J" unit who could corroborate the fact that I was watching the Nebraska/Oklahoma football game on the day of November 11, 1978. Some of these inmates were in the adjacent cells or were in cells across from me. While I could describe some of these individuals, I do not know their names and therefore has been virtually impossible for me to determine what their true identities might be. This means that I will in all likelihood be unable to produce witnesses that could prove my innocence of the charges pending against me.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: This 27 day of August, 1980.

/s/ _____
ADOLPHO REYNOSO

DECLARATION OF MANUEL U. A. ARAUJO

I, Manuel U. A. Araujo, hereby declare and state as follows:

1. I am a Deputy Federal Public Defender appointed to represent the defendant, ADOLPHO REYNOSO, in case number CR 80-575-MML.

2. I have met with MR. REYNOSO following my appointment as counsel by the court, and have attempted with him to reconstruct the list of names of his defense witnesses, both alibi and otherwise. I have met with Mr. Reynoso at least three times for that purpose and have had an investigator from our office speak with the inmate locator in Washington, D.C., on two occasions. Despite these efforts, difficulties have remained.

(a) To this date, several potential witnesses are known to MR. REYNOSO only by nickname. Since MR. REYNOSO has been physically removed from these potential witnesses for almost two years, he cannot now find them with the limited information that we have.

(b) Several potential witnesses of the defendant cannot be found on the Lompoc inmate roster supplied by the prosecution, since the inmate rosters list the inmates by last name only and do not give the cell to which the inmates were assigned within the unit. Further, many of the inmate rosters provided to us by the government are for dates other than November 11, 1978.

(c) One of the alibi witnesses, Gary Lowe, died at Lompoc of natural causes in January, 1980. Another, Michael Thompson, died at Springfield Federal Penitentiary in June, 1979, also of natural causes.

(d) One of the witnesses desired to be subpoenaed by MR. REYNOSO is currently at the federal prison at Marion, Illinois. Writs will be processed for this person to be brought here for interview and possible testimony.

3. On August 18, 1980, at hearings on discovery motions, the Court ordered the government to provide me with records of both defendant REYNOSO's administrative hear-

ings at Lompoc and his detention in the isolation unit relating to the charges in this case. At this time, those records have not been made available to me.

4. The above information is supplied in support of defendant REYNOSO's motion to dismiss the indictment.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 27th day of August, 1980, at Los Angeles, California.

/S/

MANUEL U. A. ARAUJO
Deputy Federal Public Defender

FEDERAL BUREAU OF INVESTIGATION

Date of transcription: 12/4/78

ADOLPH C. REYNOSO, Inmate Number 35824-136, was interviewed in the Apprehension Room at the Federal Correctional Institution (FCI), Lompoc, California, where he is currently incarcerated. This interview was conducted in the presence of Investigative Lieutenant JAMES J. COOKSEY.

At the outset of the interview, REYNOSO was advised of the identity of the interviewing Agents and that the purpose of the interview was regarding the fatal stabbing of THOMAS ALBERT TREJO on November 11, 1978. REYNOSO initially provided the following information:

REYNOSO advised that he was born on August 21, 1943, in Denver, Colorado, and is currently doing a sentence for bank robbery. Prior to being locked in "I" Unit, he resided in cell E-17 in "J" Unit.

REYNOSO advised that on the morning of November 11, 1978 he awoke at approximately 5:45 AM, and remained in his cell, E-17, until the doors were unlocked. He did not go to early breakfast and instead remained in the unit and showered and cleaned his cell. He stated he went to the TV room and watched several football games during the course of the day, including the Oklahoma/Nebraska game. He watched these games with inmates PEDRO FLORES and a white male who resides in "J" Unit in cell E-18. He did leave the unit briefly and went to the canteen line for approximately five minutes. He then went to the brunch at approximately 10:00 AM with the white inmate who resides in cell E-18, as previously mentioned. The brunch meal took approximately 25 minutes, and after that he went back to "J" Unit and continued watching the football games until approximately 2:00 PM. At 2:00 PM he went to the gym and worked out. He stated this could be verified by the black officer who was working in the gym on that afternoon.

After working out, he played shuffleboard with an inmate by the name of SAM, who resides in "C" Unit. He left the gym at approximately 3:00 PM and returned to "J" Unit.

Upon arriving in "J" Unit, he went to his cell and made coffee. He placed the time as approximately 3:15 PM. He remained in the unit until his unit received the chow call, at which time he went to the evening meal.

He advised he did not know about any stabbing until he was locked down in "I" Unit during the late evening on November 11, 1978.

REYNOSO admitted that he knew THOMAS ALBERT TREJO, having known him from San Quentin when they had served state time together. REYNOSO advised this was his first federal incarceration and he knew him from no other institutions.

REYNOSO advised he did not associate with CHINO OLVERA on November 11, 1978; however, he did admit knowing CHINO OLVERA. He also admitted knowing WILLIE GOUVEIA, who he stated he saw in the dining-room and with whom he had a short conversation. He could not remember specifically what was discussed and stated he might have also seen him in the corridor or the gym or the diningroom. He could not remember exactly where this conversation occurred or for how long.

He admitted knowing TONY PALACIOS, who he had met since arriving at Lompoc, however he did not remember seeing him on the Saturday in question.

He denied knowing an inmate by the name of STEVE KINARD, and after being shown a photograph of him, denied seeing him on the Saturday in question. He also advised he had met RICKY RESENDEZ, who had been locked in "I" Block with him on Saturday, November 11, 1978, however he did not associate with him prior to that.

At this point in the interview, REYNOSO said, "I can't account for anyone else's presence. I can't account for nobody but myself."

REYNOSO denied any involvement in the Mexican Mafia or any association with its members; however, he did admit that he had done some "crazy things" while in state custody when he was younger.

Interviewed On 11/21/78 at Lompoc, California

File # Los Angeles 70-1054

by: SA James R. Wilkins and

SA Robert J. Ladd

Date dictated: 11/28-78

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/15/78

An attempt was made to interview PHILLIP RALPH SEGURA, Inmate Number 14801-116, in the Apprehension Room, Federal Correctional Institution, Lompoc, California. This interview was attempted in the presence of Investigative Lieutenant JAMES J. COOKSEY.

Prior to any questioning, SEGURA was advised of the identity of the interviewing Agent, purpose of the interview, and was furnished with an "Interrogation; Advice of Rights" form, which he read. After reading this form, SEGURA refused interview and stated he had nothing to say.

Interviewed on: 12/6/78 at Lompoc, California File #Los Angeles 70-105
by: SA JAMES R. WILKINS/bef
Dated dictated 12/11/78

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

DECLARATION

JOEL LEVINE hereby declares and says as follows:

1. I am the attorney of record for defendant Philip Segura in Case No. Cr-80-535-MML.

2. Since July 28, 1980, when I first met Mr. Segura following my appointment as counsel by the Court, I attempted with him on numerous occasions to list the names of his defense witnesses, both alibi and otherwise. I have met with Mr. Segura four times for that purpose and spoken with the inmate locator in Washington, D.C. three times. Despite these efforts, the following difficulties have been encountered:

(a) Several potential witnesses are known to the defendant only by nickname. Since the defendant has been removed from these potential witnesses for almost two years, he cannot now find them with such limited information.

(b) Several potential witnesses of the defendant could not be found on the Lompoc inmate rosters supplied by the prosecution, some of which appeared to be for dates other than November 11, 1978.

(c) One of the alibi witnesses, Gary Lowe died at Lompoc of natural causes in January, 1980. Another, Michael Thompson, died at Springfield Federal Penitentiary in June, 1979, also of natural causes.

(d) One witness (alibi) has been released from federal custody in June, 1980 from McNeil Island. The inmate locator advised that I must write the Warden of that institution for assistance in learning of this inmate's current address, which I did on August 22, 1980.

(e) Another alibi witness was released from federal custody (from the Long Beach Community Treatment Center) in 1979. I am currently taking steps to locate his whereabouts.

(f) Three of the witnesses are incarcerated at federal prisons at Marion, Illinois, Leavenworth, Kansas, and Terra Haute, Indiana. Writs are currently being processed for these persons to bring them here for interview and testimony, with no guarantee that either will be possible on or before the trial date of this case.

3. On August 18, 1980, at hearings of discovery motions, the Court ordered the Government to provide me with records of both defendant Segura's administrative hearings at Lompoc and his detention in the isolation unit relating to the charges in this case. At the time this Declaration is being drafted, those records have not been made available to me.

4. The above information is supplied in support of defendant Segura's motion to dismiss the indictment. The foregoing is true and correct, and I would be willing to testify as such under penalty of perjury if called upon to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of August, 1980, at Los Angeles, California.

/s/ _____
JOEL LEVINE

DECLARATION OF JOEL LEVINE

Joel Levine hereby declares and says as follows:

1. I am the attorney of record for Defendant Philip Segura in Case No. CR 80-535-MML.

2. On September 10, 1980, two days after the hearing of Defendant's motion to dismiss the indictment, I was provided by the Government with the Jenck's Act statements of the witnesses it intended to call in its case in chief. Between September 10 and September 12 of 1980, I read and digested information contained in the discovery material provided to me on September 10. It appeared to me from reading the material that the only inmate witness interviewed by the Government prior to the indictment in this case who gave admissible and incriminating evidence, implicating Defendant Philip Segura in the murder of Thomas Trejo, was one William Kenneth Giffin. Mr. Giffin was interviewed on three occasions by agents of the Federal Bureau of Investigation and provided detailed statements which were later recorded in FBI 302 interview forms. These forms indicate that Mr. Giffin was interviewed on November 27, 1978, November 29, 1978 and November 30, 1978.

3. In the previously submitted exhibits in support of Defendant Segura's motion to dismiss the indictment, it was indicated on forms compiled by the Bureau of Prisons that the FBI investigation implicating Defendant Philip Segura in the murder of Thomas Trejo was completed by December 13, 1978. The interviews and discovery material provided by the Government on September 10, 1980 confirmed that fact.

4. The only other evidence submitted to the grand jury in support of the indictment against Philip Segura were the scientific analyses performed by the FBI on a palmprint and a footprint, both of which are allegedly those of Defendant Segura, as found at or near the scene of the murder. This was the only evidence, other than Mr. Giffin's testimony, which is arguably admissible at trial and which was presented to the grand jury for purposes of securing an indictment.

I declare under penalty of perjury that the foregoing is true and correct and I would be willing to testify to the foregoing in open Court if called upon to do so.

Dated this 15th day of September, 1980, at Los Angeles, California.

/S/ _____
JOEL LEVINE



DECLARATION OF PHILIP SEGURA

Philip Segura hereby declares and says as follows:

1. I am a defendant in Case Number CR 80-535-MML.
2. On October 20, 1978, I arrived at FCI, Lompoc, California, to serve a federal sentence.
3. On or about December 4, 1978, I was removed from the prison population and placed in an isolation unit, allegedly for being involved in the murder of Thomas Trejo. At the time I was placed in isolation, all of my personal belongings were taken from me. I was placed in isolation to await disciplinary proceedings and trial.

4. Several weeks later, I was taken to an administrative hearing within the prison where I was adjudged guilty of the murder of Thomas Trejo. Although I had requested the assistance of a lawyer, none was provided to me. I therefore was unable to locate witnesses for that hearing to prove my innocence.

5. Since then and until the indictment in this case (a period in excess of 18 months), I remained in isolation. Despite my requests for legal representation, none was provided. Also, because I was continuously in isolation, I was personally unable to contact inmates who could establish my presence elsewhere than at the murder scene on November 11, 1978. I am now first attempting to do that with great difficulty, because many of the inmates in my original unit at Lompoc in 1978 are elsewhere (either in other units, other prisons, or no longer incarcerated).¹

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of August, 1980, at Los Angeles, California.

/S/

PHILIP SEGURA
Declarant

¹ One of my potential alibi witnesses, Gary Lowe, died at Lompoc in January, 1980.

DECLARATION OF ROBERT RAMIREZ

ROBERT RAMIREZ hereby declares the following to be true and correct under penalty of perjury:

1. I am the Defendant in the above case and am currently being charged with the death of Thomas Trejo, which is alleged to have occurred on November 11, 1978;
2. That on November 11, 1978, after the death of Thomas Trejo, I was interviewed by the prison authorities for approximately one-half hour; at that interview, I was merely asked if I had any knowledge concerning the death of Thomas Trejo; the interview was a standard interview that was made of all prisoners in the institution concerning whether any inmate had information concerning the death of Thomas Trejo;
3. On December 4, 1978, I was interviewed a second time concerning the death of Thomas Trejo; at the conclusion of the interview, I was removed from the normal inmate population and placed into solitary confinement; while in solitary confinement; I was interviewed on three other occasions: on November 24, 1978, November 30, 1978 and December 4, 1978; attached as an exhibit to this declaration is a copy of the FBI summary of the December 4, 1978 interview; during that interview I was informed that I was a suspect in the murder of Thomas Trejo and in response to that accusation I requested to have an attorney;
4. From December 4, 1978 until mid-July of 1980, I was kept in solitary confinement at the Federal Correctional Institute at Lompoc; during that period of time, I was kept away from all other inmates in the institution and I was never provided with an attorney to assist me in investigating the case and in protecting my constitutional rights;
5. Ultimately on June 17, 1980, an indictment was returned against me alleging the crimes of conspiracy and murder; on July 14, 1980 I was brought to Court and for the first time an attorney was appointed to represent me on the murder and conspiracy charges;
6. On numerous occasions during the 20-month lock-down period, I was told by prison authorities that I would be go-

ing to court on a charge of murdering Thomas Trejo; on numerous occasions throughout my 20-month lock-down period, I requested an attorney;

7. During the 20-month lock-down period, two separate hearings were held in the prison concerning the charge that I was responsible for the murder of Thomas Trejo; the first hearing was a disciplinary hearing held approximately one and one-half weeks after I was placed in solitary confinement; at the hearing I was told that I had been accused of causing the death of Thomas Trejo and I was asked if I had anything to say; at the conclusion of the hearing, I was informed that I had lost all of my good time and would be transferred to Leavenworth Penitentiary;

8. The second hearing occurred before the Institutional Disciplinary Committee approximately four weeks after I had been placed in solitary confinement; I was informed that the Committee would be meeting because it was alleged that I had been involved in the murder of Thomas Trejo; the Committee members asked me if I had any witnesses; I requested that I be provided with an attorney and that I would not participate in the meeting and would make no statement concerning my witnesses until I spoke with an attorney; at the conclusion of the hearing, I was again informed that I had lost all of my good time and that I would be transferred to Leavenworth Penitentiary;

9. On a third occasion during the 20-month period of solitary confinement, approximately two months after my solitary confinement began, I was brought before an additional committee to determine whether I should be transferred to a special Marion Control Unit; this Control Unit was for prisoners who were too dangerous to be kept in the general prison population; at the hearing I requested that I be provided with an attorney prior to the start of the hearing, but I was informed that I had no right to an attorney at the hearing; the committee members then questioned me concerning the murder of Thomas Trejo; I refused to answer any questions on the grounds that I had not been provided an attorney; at the conclusion of the hearing, I was provided with a written report stating that I was a threat to the prison population and would be transferred to the Marion

Control Unit; in effect, I had been found guilty of the murder by all of the three foregoing committees;

10. Written documentation of the results of all of the foregoing hearings were provided to me; all of those documents are in my property and have been transferred by the prison authorities to Marion, Illinois; at the present time I have not been provided with additional copies of those documents which the Government has indicated they have;

11. That during the 20-month period of solitary confinement, between December 4, 1978 and July 14, 1980, I was kept away from all other inmates at the institution and was unable to contact any potential witnesses within the inmate population who could verify my whereabouts on the day of Mr. Thomas Trejo's death;

12. There were four inmates at the Federal Correctional Institute at Lompoe whose full names I do not know who could verify that on November 11, 1978 at the time of the death of Thomas Trejo that I was in the gymnasium at the prison; these four persons were known only to me as "Aba-lone", "Jose", "Paharo" and "Jesus R.C."; it is now almost two years since the death of Thomas Trejo and I am unable to determine the identity of these persons or their present location; there are also two other inmates by the names of David Jaramillo and Alberto Rosas who were also present in the gymnasium on November 11, 1978 at around the same time that I was at the gymnasium; these witnesses could testify concerning my whereabouts on the day of the death of Mr. Trejo; however, I am informed and believe that one of those inmates have since died.

Dated this ____ day of August, 1980, at Los Angeles, California.

/s/

ROBERT RAMIREZ

FEDERAL BUREAU OF INVESTIGATION

Date of transcription: 12/14/78

ROBERT RAMIREZ, Inmate Number 17160-148, was interviewed at the Federal Correctional Institution (FCI), where he is currently incarcerated. RAMIREZ was interviewed in the presence of Investigative Lieutenant JAMES J. COOKSEY, FCI, Lompoc.

Prior to any questioning, RAMIREZ was once again advised of the identity of the interviewing Agent and that a clarification of certain facts was needed of him regarding his previous interviews. RAMIREZ was very hostile at the outset of the interview and claimed that the interviewing Agent and the Investigative Lieutenant were "putting him out front and attempting to front him off" to the killers of THOMAS TREJO. He could not explain his concern other than to say since he was a friend they might think he was providing information about them. RAMIREZ, however, could not explain the "them" he was referring to.

RAMIREZ again advised that on the morning of November 11, 1978, he awoke at approximately 7:00 AM and went to breakfast with three inmates, one by the name of JESUS, who is the only Mexican who plays tennis, and goes by the initials "RC". The other inmate identified as SAL is the orderly in "F" Unit. He could not recall the other inmate who he went to breakfast with; however, upon being reminded by the interviewing Agent that he had previously indicated this individual to be PELON, he advised that that was correct and that PELON's name was ROBERT.

Interviewed on: 12/4/78 at Lompoc, California File #Los Angeles 70-10548

by: SA JAMES R. WILKINS/bef
Date dictated: 12/8-78

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EXHIBIT A

RAMIREZ advised that he went to the recreation yard when it was opened and that he had worked out and walked the track. He related that he seen THOMAS TREJO on that morning and had in fact seen him in bed when RAMIREZ had left the unit.

RAMIREZ stated that after being on the yard for some time, it began raining and he came into the institution. He had brunch, as previously stated, saw THOMAS TREJO entering the chow hall at approximately 11:30 AM, and thereafter went to the gymnasium. At the gymnasium, there was a basketball game in progress between several Chicanos and black inmates, and he assisted a black inmate by the name of DAVID, who was keeping score.

Once again RAMIREZ was questioned regarding the activities of several of the individuals who are suspects in the homicide of THOMAS ALBERT TREJO, and he provided the following:

He did not recall whether or not he saw TONY PALACIOS on the morning of November 11, 1978. He related that he remembers seeing WILLIE GOUVEIA sometime during the day and believes that he possibly walked with him in the main corridor. He vehemently denied any association with CHINO OLVERA. Regarding ADOLPH REYNOSO, he advised he saw him, however, was not with him during the day, did not work out with him in the yard or gymnasium on that day, and did not associate with him in the hall. Regarding PETE FLORES, RAMIREZ advised that he is a friend of CHINO OLVERA and therefore he does not associate with him. He denied being with RICARDO RESENDEZ on Saturday, November 11, 1978.

RAMIREZ advised that he did not go into "M" Unit on that Saturday; however, he might have gone to the door, but did not go inside. He could not recall as to why he might have gone to the door of "M" Unit other than to possibly speak to some inmates on the inside. At this point, RAMIREZ advised that when he had initially come to FCI, Lompoc, in July, 1978, that he had resided in cell A-18 for a few weeks. He explained this was the last cell on the lefthand side in "M" Unit.

RAMIREZ advised that he had previously been incarcerated at Terminal Island, California, in 1973 and had been transferred to Leavenworth, Kansas, in 1976 following an altercation wherein he had come to the assistance of his cousin, PABLO VILLAREAL, who had been the victim of an assault. RAMIREZ advised that VILLAREAL was attacked by a "crazy inmate" with a knife, and that he (RAMIREZ) had hit this inmate over the head with a chair.

At this point, a telephone call was received in the interview room indicating that inmates ADOLPH REYNOSO, PHILLIP SEGURA, and PEDRO FLORES had been locked up in the Segregation Unit for investigation of the murder of THOMAS ALBERT TREJO. RAMIREZ was advised of this fact and initially denied knowing any inmate by the name of PHILLIP SEGURA. RAMIREZ quickly became agitated and animated and began yelling that the FBI had doublecrossed him and fronted him off to these individuals. He again denied, however, why he was fearful of these individuals and again stated he knew nothing of the murder of THOMAS ALBERT TREJO. He did make the admission, however, that just prior to being interviewed by the FBI that he had been talking to "BLACK" and that now "they" would think that he was providing information to the FBI. He again accused the interviewing Agent of "setting him up", and he advised he would make sure "his family" found out about it.

At this point, RAMIREZ was advised of his rights through use of an "Interrogation; Advice of Rights" form by SA WILKINS. At this point, SA WILKINS advised RAMIREZ that he, RAMIREZ, was considered a prime suspect in the homicide of THOMAS ALBERT TREJO, at which point RAMIREZ advised that he wished to have an attorney present and that he had nothing further to say to the FBI. At this point, the interview was terminated and RAMIREZ was escorted to the Segregation Unit by FCI staff.

STILZ, BOYD, LEVINE & HANDZLIK

Attorneys at Law
Two Century Plaza
22049 Century Park East, Suite 1200
Los Angeles, California 90067
(213) 277-6844 or 879-0662

Attorneys for Defendant Philip Segura

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR-80-535-MML

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ADOLPHO REYNOSO, aka "CHAMP", ROBERT RAMIREZ,
aka "BLACK BOBBY", WILLIAM GOUVEIA, aka "WILLIE
BOBO", PEDRO FLORES, aka "BLACK PETE", PHILIP
SEGURA, aka "BLACK", STEVEN KINARD, DEFENDANTS.

EXHIBITS IN SUPPORT OF DEFENDANT
PHILIP SEGURA'S PREVIOUSLY NOTICED MOTION
TO DISMISS INDICTMENT

Defendant Philip Segura hereby submits, in support of the previously noticed Motion to Dismiss the Indictment, the following exhibits received on August 29, 1980 from the United States Attorney:

EXHIBIT 1: Incident Report dated December 13, 1978 (2 pages)

EXHIBIT 2: Request for Administrative Remedy dated January 10, 1979.

Respectfully submitted,

STILZ, BOYD, LEVINE & HANDZLIK
By Joel Levine

JOEL LEVINE
Attorneys for Defendant Segura

INCIDENT REPORT

C1, Lompoc, Ca.

PART I - INCIDENT REPORT

2 NAME OF INMATE SEGURA, PHILLIP R.	3 REGISTER NUMBER 14B01-11EL	4 DATE OF INCIDENT 11 Nov 78	5 TIME 12:30 PM
6 PLACE OF INCIDENT "M" Unit	7 ASSIGNMENT P/S	8 QUARTERS L'Unit	
9 INCIDENT KILLING, PLANS TO COMMIT A KILLING			10 CODE 001 801

11. DESCRIPTION OF INCIDENT

Based on confidential information and inmate interviews, you did on 11 Nov 78, participate in the fatal stabbing of inmate TREJO, THOMAS A., Reg. No. 35025-136. This murder took place in "M" Unit at approximately 12:30 PM, you were assisted by not less than six other inmates, of which ten others, along with you did also stab the victim.

12. SIGNATURE OF REPORTING EMPLOYEE
*C. F. Cooksey*13. NAME AND TITLE (PRINTED)
J. COOKSEY, INV. CS14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY
*C. F. Cooksey*15. DATE INCIDENT REPORT DELIVERED
12-12-197816. TIME INCIDENT REPORT DELIVERED
2:00 P.M.

PART II - COMMITTEE ACTION

17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT

18. IT IS THE FINDING OF THE COMMITTEE THAT, IN APPROPRIATE BOX:

YOU COMMITTED THE PROHIBITED ACT AS CHARGED

YOU COMMITTED THE FOLLOWING PROHIBITED ACT:

YOU DID NOT COMMIT A PROHIBITED ACT

19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION

20. COMMITTEE ACTION

21. DATE OF ACTION

CHAIRMAN

MEMBER

MEMBER

PRIVILEGED STATEMENT AND ATTITUDE

No I did not participate in this killing. I was out in my unit or on the yard. I was in my unit watching the football game. I was not in or around M-Unit at any time. I didn't know anything about it until around 3:00 P.M. as I was in the corridor going to my unit, I was coming from the movie after it was over. Also I was watching the movie with a friend, Joe Russell # 14735-148. I did see Trejo from San Quentin, but he was always by himself. I do not believe he belonged to the gang. I never did get involved in them. I have no idea of why anyone would want to just go in something like this, but they trying this type of thing at San Quentin.

Attitude was good.

14 OTHER FACTS ABOUT THE INCIDENT

On Dec-13-1975 the F.B.I., completing their investigation of this incident and did release report back to the Unit. For their investigation and disposition this date.

15 INVESTIGATOR'S COMMENTS AND CONCLUSIONS

Due to the investigation of the F. B. I. and the investigating supervisor of this institution, I feel the report is true as written.

Investigation by the F.B.I. and the institution's Supervisor indicates that inmates Segura did participate in the assault on inmate Trejo. the information received by them is available as requested and needed.

16 ACTION TAKEN

Inmate Segura was placed in I-Unit on 12-04-1978 pending investigation by both ~~xxxxxxxxxxxxxxxxxxxxxx~~ the F.B.I and the investigative Supervisor.

Investigation completed this date (13 Dec 1975) and now referred to the unit team for disposition.

O. J. Goss.

SIGNATURE

Correctional Supervisor.

TITLE

FEDERAL BUREAU OF PRISONS
REQUEST FOR ADMINISTRATIVE REMEDY

INSTRUCTIONS:
TYPE OR USE BALL POINT
PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT
SHEET IN QUADRUPPLICATE.

To: _____ Warden of Institution

Regional Director, Bureau of Prisons
From: William R. Sizemore
LAST NAME, FIRST, MIDDLE INITIAL

11801-166 FCI Lompoc.
REG. NO. INSTITUTION

Part A—INMATE REQUEST

On Dec. 21, 1978 I was found guilty before an IDC. On Dec. 21, 1978. The decision in this matter was UNFAIR. I HAD NO LEGAL COUNSEL TO REPRESENT ME IN THIS HEARING. THE LAW SAID "THERE ARE NO JURORS IN DISCIPLINARY HEARINGS" ALTHOUGH THE PRISONER DOES NOT GENERALLY HAVE ACCESS TO COUNSEL AT DISCIPLINARY HEARINGS, HE DOES WHEREAS THE DISCIPLINARY IS BASED UPON ALLEGATIONS OF MURDER. A GREAT INJUSTICE IS BEING DONE TO ME IN THIS MATTER. FOR I AM NOT GUILTY. YOUR CONFIDENTIAL SOURCES IS NOT ENOUGH TO FIND GUILT IN THIS MATTER. WHY IS IT THAT ALL OF SUDDEN YOU HAVE SUCH SOURCES AFTER ALMOST A MONTH HASSED BEFORE I WAS CHARGED FOR THIS? I FEEL I'M BEING USED AS AN ESCAPE ROUTE FOR YOUR SOURCES AND ALSO BEING USED TO CLEAN UP YOUR FAULTS.

1-19-79

DATE

William R. Sizemore 11801-11
SIGNATURE OF REQUESTOR

Part B—RESPONSE

Your allegation that on 12-21-78 that you were found guilty before an IDC hearing unjustifiedly because you were not afforded the right to have counsel has been investigated. This was not a judicial hearing. It was an administrative hearing conducted in accordance with policy statement 7400.4-239 on Inmate Discipline. As to your question as to why a month's delay from the time of the incident, this was an on-going investigation and as evidence was accumulated and the suspects identified, then the appropriate action was taken. I further find that at no time during the proceedings were your rights violated in accordance with current policy. Therefore, your request for adm. remedy is denied.

1-20-79

DATE

DEPARTMENT HEAD OR REPRESENTATIVE

WARDEN, ASSOCIATE, OR REGIONAL DIRECTOR

FIRST COPY: FOR OFFENDER'S CENTRAL FILE AFTER COMPLETION.

Part C—RECEIPT

Return to: SCG/RP 11801-166 L FCI Lompoc
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. INSTITUTION

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:
Violation IDC decision of 12/2/78.

1-20-79
DATE

CENTRAL FILE
RECEIVED BY (PRINT NAME OR NUMBER)

STILZ, BOYD, LEVINE & HANDZLIK

Attorneys at Law
Two Century Plaza
22049 Century Park East, Suite 1200
Los Angeles, California 90067
(213) 277-6844 or 879-0662

Attorneys for Defendant Philip Segura

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR-80-535-MML

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ADOLPHO REYNOSO, aka "CHAMP", ROBERT RAMIREZ, aka "BLACK BOBBY", WILLIAM GOUVEIA, aka "WILLIE BOBO", PEDRO FLORES, aka "BLACK PETE", PHILIP SEGURA, aka "BLACK", STEVEN KINARD, DEFENDANTS.

NOTICE OF ALIBI

Pursuant to Rule 12.1 of the Federal Rules of Criminal Procedure, defendant Philip Segura hereby gives notice of his intent to rely upon the defense of alibi in the above-entitled matter.

At the time of the alleged offense, defendant Segura was in one of several other locations than "M" Unit at F.C.I., Lompoc, California, those locations being "L" Unit or the prison yard.

Defendant Segura will rely on the testimony of the following persons currently known to him to help establish this defense:

Philip Segura (Los Angeles County Jail)
Joseph Roselli (address unknown)
Robert Carillo (address unknown)
Alex Trujillo (F.C.I. Lompoc)
Percy David (F.C.I. Lompoc)
Richard Wilkerson (F.C.I. Lompoc)

Inmate named "Roger" (address unknown)

Inmate named "Hat"(address unknown)

Steven Romero (F.C.I. Lompoc)

Respectfully submitted,

STILZ, BOYD, LEVINE & HANDZLIK

By Joel Levine

JOEL LEVINE

Attorney for Defendant Segura

MICHAEL J. TREMAN
Attorney at Law
8 E. Figueroa, Ste. 230
Santa Barbara, CA 93101
(805) 962-6544, 963-3569
Attorney for Defendant
WILLIAM GOUVEIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR 80-535-MML

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ADOLPHO REYNOSO, WILLIAM GOUVEIA, ET AL., DEFENDANTS.

**DECLARATION OF WILLIAM GOUVEIA IN SUPPORT OF
MOTION TO DISMISS THE INDICTMENT OR IN THE
ALTERNATIVE TO EXCLUDE EVIDENCE**

**DATE: September 8, 1980
TIME: 2:00 p.m.**

I, WILLIAM GOUVEIA, declare:

I am a defendant in the above captioned matter and am presently incarcerated in the Los Angeles County Jail.

On November 11, 1978, I was an inmate in the general population of the Federal Corrections Institute, Lompoc, California. At approximately 8:00 p.m. I was removed from my cell and placed in solitary confinement ("segregation," "the hole") in the unit designated I-unit. At that time I received a memo stating that I was placed in segregation pending investigation or trial for crimes committed in the institution.

It is my recollection that I received another memorandum on December 6, 1978, advising me that I was being held in administrative detention pending investigation of the murder of Thomas A. Trejo. I was advised in the memo that inmate interviews and confidential information indicated my involvement in the killing. I was further advised

that once the F.B.I. notified the prison officials that administrative action was appropriate an incident report would be prepared and processed.

Prior to receipt of the December 6, 1978 memo, I was interviewed by the F.B.I. In the process of the interview I was advised that I had a right to an attorney's advice before the interview and that one would be provided if I so requested. Although I did agree to talk to the F.B.I. at that time without an attorney, once I received the memo I requested counsel through institutional channels and, I believe, I made written requests to the Santa Barbara County Public Defender's Office in Lompoc. I was advised by both these sources that I could not have an attorney.

I agreed to talk to the F.B.I. because that interview was my first opportunity to try and clear myself. Prior to my interview I was advised that several inmates, in addition to the defendants in this case, were placed in solitary in connection with Mr. Trejo's death. They were subsequently returned to the main prison population, which implied to me that they were able to provide information to the F.B.I. which cleared themselves.

I received an "Incident Report" on December 13, 1978, a copy of which is attached hereto as Exhibit "A". I was subsequently taken before the Unit Disciplinary Committee on December 15, 1978 (I believe) and they forwarded the matter to the Institution Disciplinary Committee on December 21, 1978. The Institution Disciplinary Committee refused to provide me with an attorney or any information concerning the nature or source of the evidence against me. I was simply informed that all the evidence was confidential. The action taken included loss of all good time, approximately 260 days and continued solitary confinement.

During the period of time I was in solitary at Lompoc and at other institutions, the conditions of my confinement were greatly changed. I no longer had direct contact with other prisoners. I could not go to my work assignment in the food service. I could no longer go to movies, watch television, participate in craft or educational programs and my physical exercise was restricted to one hour every seven days. I was physically confined to my individual cell, instead of be-

ing able to move about the prison or the unit most of the day. My contacts with persons outside the institution were reduced to one telephone call per month from a phone always available in my unit; my visiting hours were reduced to two hours or less per visit from 3½ hours on week days and 7½ hours on weekends; and at one time, shortly after I was placed on solitary, the Lompoc institution refused to permit me any visitation. In solitary confinement I was also limited in the type of items I could purchase from the commissary and the clothing I could wear.

Prior to my being placed in solitary I enjoyed reputation as a person who minded his own business within the inmate prison population. After being placed in solitary for this case questions were raised concerning whether I was an informer and I have heard of threats upon my life by persons in the Federal Prison system who knew Mr. Trejo.

Once I was placed in solitary at Lompoc, I advised my family of the nature of the F.B.I. investigation. Both my relatives and myself discussed at that time concerns for my personal safety and treatment at the hands of the institution. Those concerns have continued through to the present time.

I left from "the hole" in Lompoc on my way to Leavenworth either the 29th or 30th of January. From Lompoc I went to Terminal Island, where I was taken to "the hole" and placed in an area called the "ice box" for two weeks. I wasn't allowed any phone calls or visits. From there they took me to Florence, Arizona and placed in "the hole" overnight. Then I was taken the next day to La Tuna and placed in "the hole" there for about a week to a week and a half. Then I was taken to El Reno and placed in "the hole" for a week. Then from there I was taken to Leavenworth. I got to Leavenworth in the first week of March and was placed in "the hole." After two days in "the hole" I was taken in front of their I.D.C. committee and told what I was doing there, that I should be in Marion. They let me out of "the hole" that afternoon. They asked me if I was going to be indicted on the murder, and I told them I didn't know what was going on. Six months later they sent me to Marion. I was at Marion until they brought

me back for court. The day I left Marion I didn't know I was leaving til two hours before the bus picked me up, and all they told me was that I was leaving for Los Angeles on a writ.

I was first advised on the filing of this indictment on my way to Los Angeles from Marion. Therefore, I left all my records on what happened in Lompoc in my personal property at Marion. Although the government has promised to provide this material to my attorney, only the Incident Report, Exhibit "A", has been provided to date. My recollection of where I was on November 11, 1978, and who might be a witness for my defense is greatly hampered by the time which has transpired to the indictment of this case. The F.B.I. transcript of my interview in December of 1978 does contain some information to help me. I have reviewed the lists of other persons in both my unit and the institution in November of 1978 in any effort to try and trigger my memory, but in most cases I only knew inmates by nicknames and the lists do not contain that information. Also, in some cases, the lists contain information which is completely different from my recollection, such as the location within the institution of persons I knew. My attorney has also provided me with copies of the administrative reports which have been submitted by other defendants in this case and discussed them with me in order to help me recreate what took place in my case. This process has helped my recollection as to some points, but as to many things, such as my request for legal assistance to Santa Barbara County Authorities, I have only vague recollections or impressions.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ____ day of September, 1980, at Los Angeles, California.

/s/ _____
WILLIAM GOUVEIA

U. S. DEPARTMENT OF JUSTICE BUREAU OF PRISONS INCIDENT REPORT		1. NAME OF INSTITUTION FCI, Lompoc, Ca.	
PART I. INCIDENT REPORT			
2. NAME OF INMATE GOUVIA, WILLIAM	3. REGISTER NUMBER 13739-116K	4. DATE OF INCIDENT 11 Nov 78	5. TIME 12:30 PM
6. PLACE OF INCIDENT "M" Unit	7. ASSIGNMENT F/S	8. QUARTERS K Unit	
9. INCIDENT Aliding Another Person in a Killing Assault Possession of a Sharpened Instrument			10. CODE 801 002 202
11. DESCRIPTION OF INCIDENT Based on confidential information and inmate interviews, you did on 11 Nov 78 participate in the fatal stabbing of inmate TREJO, THOMAS A., Reg. No. 35025-136. This murder took place in "M" Unit at approximately 12:30 PM, you were of assistance to three other inmates who did the actual stabbing, by furnishing weapons to them, disposing of bloody clothing for them, and standing guard so that they would not be interrupted, as well as disposing of weapons after the act was committed.			
12. SIGNATURE OF REPORTING EMPLOYEE <i>J. Cooksey</i>	13. NAME AND TITLE (PRINTED) J. COOKSEY, Inv. CS		
14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY <i>J. Cooksey</i>	15. DATE INCIDENT REPORT DELIVERED 11 Dec 78	16. TIME INCIDENT REPORT DELIVERED 12:30 PM	
PART II. COMMITTEE ACTION			
17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT 			
18. IT IS THE FINDING OF THE COMMITTEE THAT: (X) APPROPRIATE BOX YOU COMMITTED THE PROHIBITED ACT AS CHARGED <input type="checkbox"/> YOU COMMITTED THE FOLLOWING PROHIBITED ACT: <input type="checkbox"/> YOU DID NOT COMMIT A PROHIBITED ACT <input type="checkbox"/>			
19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION 			
20. COMMITTEE ACTION 			
21. DATE OF ACTION _____			
CHAIRMAN SP-15-83a 9-72	MEMBER HOD	MEMBER FOR CENTRAL FILE RECORD	MEMBER FBI-LON 11-11-78

EXHIBIT A/A

PART III - INVESTIGATION

DATE

13 Dec 70

INMATE STATEMENT AND ATTITUDE

Inmate Gouvia alleges he has no knowledge of the incident and definitely did not participate in any part of the assault. He alleges that at 12:30 PM he was in I-Unit shooting the bull with different inmates on-the-unit's-flats. States there are three witnesses: JACKARD, DANNY GRAY and that these are the only names he knows them by. He admits he had seen inmate Trejo here in the main corridor the first evening he was here, but didn't know him, and nothing else to say.

OTHER FACTS ABOUT THE INCIDENT

This report was released by the FBI back to the institution on 13 Dec 70 for their investigation and disposition.

Inmate Kinard #10159-168(K) alleged that he had seen inmate Gouvia in the Gym at approximately 12:30 PM, and had named him as a witness to verify his whereabouts at the time of the stabbing.

INVESTIGATOR'S COMMENTS AND CONCLUSIONS

Investigation by the FBI and the Institution's Investigative Supervisor indicates that inmate Gouvia did participate in the assault on inmate Trejo. The information received by them is available as requested and needed.

ACTION TAKEN

Inmate Gouvia was placed in I-Unit on Nov 11, 1970 pending investigation by both the FBI and the Investigative Supervisor. Investigation completed this date (13-Dec-70) and now referred to the unit team for disposition.

P. Mims
SIGNATURE

Correctional Supv.
TITLE

DECLARATION OF JAMES R. WILKINS

I, JAMES R. WILKINS, declare under penalty of perjury:

1. I am a Special Agent with the Federal Bureau of Investigation and was so employed in November 1978.

2. On November 11, 1978, I received a telephone call informing me of the brutal murder of Thomas "Hoppo" Trejo that day in Cell A18 of "M" Unit at Lompoc Federal Correctional Institution. I also learned on that day from FCI officials that the suspected murders of Thomas Trejo were members of the Mexican Mafia, a prison gang each of whose members must have killed somebody in order to gain membership. I was informed that all known Mexican Mafia members at FCI, Lompoc were placed in the Administrative Detention Unit ("ADU") pending investigation of the murder. This included Adolpho "Champ" Reynoso, Pedro "Black Pete" Flores and William "Willie Bobo" Gouveia.

3. On or about November 22, 1978 these defendants were released from the ADU and returned to the general population. They were returned to the ADU by FCI officials on December 4, 1978, when additional information tying them and defendants Robert "Black Bobby" Ramirez, Phillip "Black" Segura and Stevin Kinard to the murder of Thomas Trejo was obtained.

4. Beginning November 11, 1978, I and FBI Special Agents Robert Ladd, Thomas Mansfield and other FBI agents conducted interviews of in excess of 100 witnesses regarding the Trejo murder. Several witnesses were interviewed more than once. In addition, I prepared and caused to be sent to the FBI laboratory in Washington, D.C. large quantities of tangible evidence found at the scene of the murder.

5. On November 29, 1978, as a result of an interview with a prison inmate, I identified the defendants in this case as the possible murderers of Thomas Trejo. I called the United States Attorney's Office, Los Angeles and related the state of the investigation to Assistant United States Attorney Bert H. Deixler. Deixler informed me that the United States Attorney's Office would open a file on the murder and that he would be assigned to the investigation.

On January 2, 1979, I sent the first written communication regarding this case to Assistant United States Attorney Deixler.

6. Prior to my first contact with the United States Attorney's Office, I had interviewed Adolpho Reynoso (on November 21, 1978), Pedro Flores (on November 21, 1978), and Robert Ramirez (on November 14, 1978 and November 20, 1978). In none of these interviews did any of these individuals make any statement about wishing to speak with an attorney.

7. On December 4, 1978, I interviewed Robert Ramirez. On December 6, 1978, I interviewed William Gouveia after he executed a waiver of his constitutional rights. Phillip Segura and Steven Kinard refused to be interviewed by me.

8. From January to May 1979 I conducted interviews of potential witnesses, awaited the results of requests to interview other witnesses to be transmitted from other FBI agents and awaited the results of the FBI lab investigation. Also during this period I participated in interviews with persons who were scheduled to testify in the Federal Grand Jury.

9. On or about May 10, 1979, I received a report from the FBI Laboratory which stated that, among other things, a piece of paper taken from the murder scene bore the fingerprint and palm print of William Gouveia. In that report, I was informed that the FBI laboratory required additional fingerprint exemplars of Adolpho Reynoso, Robert Ramirez, Steven Kinard and Phillip Segura.

10. From May to August I again conducted witness interviews and awaited the results of investigative requests I had sent to other FBI offices.

11. On or about August 4, 1979, I received another report from the FBI laboratory regarding certain tangible evidence sent for examination.

12. Throughout the period from November 1978 until June 1980, I spent considerable time contacting Bureau of Prisons and Department of Justice officials to ensure that witnesses who cooperated with the FBI investigation were protected.

13. On or about November 1, 1979 after defendants Reynoso, Ramirez, Segura and Kinard provided fingerprints at the direction of the Federal Grand Jury, and presumably upon the advice of counsel, who had been provided to each of them, I sent these fingerprints to the FBI Laboratory in Washington, D.C.

14. On or about February 1, 1980, I received an additional report from the FBI Laboratory informing me that the palm print of Phillip Segura was found on a piece of paper removed from the scene of the murder.

15. On or about August 11, 1980, I received an additional report from the FBI regarding tests made by the laboratory.

16. At all times I conducted this investigation diligently and with the view not only to prosecuting the guilty, but ensuring that no innocent person was charged with murder. I at no time delayed to obtain any tactical advantage, in fact, it was my strong desire to conclude this matter as quickly as possible and move on to something new.

17. Appended to this Declaration as Exhibits A-F are memoranda of interview prepared by me of my conversations with each defendant.

The foregoing is known to me of my personal knowledge, and if called upon to testify I would do so competently.

This Declaration has been read to me by Assistant United States Attorney Bert H. Deixler and I have directed him to sign it on my behalf. EXECUTED: This 3rd day of September, 1980.

/s/ James R. Wilkins, BMD

JAMES R. WILKINS
Declarant

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/15/78

WILLIAM ANSELM GOUVEIA, Inmate Number 13739-116, was interviewed in the Apprehension Room at the Federal Correctional Institution (FCI), Lompoc, California, in the presence of Investigative Lieutenant JAMES J. COOKSEY. Prior to any questioning, GOUVEIA was advised of the identity of the interviewing Agent, the purpose of the interview, and was furnished with an "Ingerrogation; Advice of Rights" form, which he read and signed.

GOUVEIA advised that on the morning of November 11, 1978, he awoke at approximately 8:00 AM, before yard time. He left the unit where he resides, which is "K" Unit, cell B-14, and went to the recreation yard where he lifted weights. He advised that in the immediate area watching the weighlifting was an inmate he knew by the name of STEVE KINARD. After he lifted weights, GOUVEIA walked the track and watched several inmates playing handball on the recreation yard.

He walked back into the institution shortly before 9:00 AM and returned to his unit, where he cleaned his cell and watched TV until the unit was released for brunch. He was observed watching TV by an inmate named PACKARD, and another inmate named DANNY, who resides in cell B-11 of "K" Unit. "K" Unit was called for brunch sometime between 10:30 and 11:00 AM, and he went to brunch with STEVE KINARD. At the chow hall, he ate at a table with STEVE, CHAMP REYNOSO, and PETE FLORES. He calculated that the meal took approximately one half hour to eat, and that after he finished eating he went to the gym and watched a basketball game. After watching this basketball game, he went to the pool tables and watched inmates playing pool. He went down the stairs in the gym and began walking the main corridor. While walking the corridor, he saw STEVEN KINARD again, CHINO OLVERA, who was returning from eating, and SAM, an inmate in "C" Unit.

He related he walked back to his unit, watched TV again for a short while, and came out for movie call at approximately 1:00 PM. Enroute to the movie he again saw SAM and CHINO, who was going to a visit. GOUVEIA advised he only stayed in the movie for approximately one half hour and then left the movie and returned to the gym, where he continued watching the basketball game. While in the gym on this occasion, he was observed by STEVE BROUGHTON (phonetic), who he identified as being the SAM from "C" Unit. At approximately 2:00 PM, he returned to the unit and remained in his unit the rest of the day. While in the unit, he again was observed by DANNY (last name unknown). He did not leave the unit until his unit was called for the evening meal, and he went to the chow hall where he ate with STEVE KINARD, PETE FLORES, CHAMP REYNOSO, and PHILLIP SEGURA. After eating, he returned to "K" Unit and remained there until he was locked down during the late evening.

GOUVEIA advised that he knew THOMAS ALBERT TREJO from FCI, Lompoc. GOUVEIA advised that he had been at McNeil Island in December, 1977, and that he, GOUVEIA, had not gotten to Lompoc until October, 1978.

GOUVEIA related that he had observed BLACK BOBBY (ROBERT RAMIREZ) on Saturday, November 11, 1978, on the yard shortly before brunch, and believed that he had passed him in the corridor and in the gymnasium. He stated he also saw TONY PALACIOS on that day on the yard or in the corridor by the movie after the movie had started. He stated he also saw him in the gymnasium during one of his visits there. GOUVEIA advised that he also knows RICKY RESENDEZ and also saw him on that day around the institution, either in the yard or in the corridor, and stated he recalls seeing him with STEVE KINARD.

GOUVEIA stated he did not go into "M" Unit at all on Saturday, November 11, 1978, and was not involved in any way with the homicide of THOMAS ALBERT TREJO. He stated he did not know any of the participants in this homicide and would provide no information regarding the homicide even if he knew.

Interviewed on 12/6/78 at Lompoc, California

File # Los Angeles 70-10548
by SA JAMES R. WILKINS/bef
Date dictated 12/11/78

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

EXHIBIT E**FEDERAL BUREAU OF INVESTIGATION**

Dated of transcription 12/15/78

An attempt was made to interview PHILLIP RALPH SEGURA, Inmate Number 14801-116, in the Apprehension Room, Federal Correctional Institution, Lompoc, California. This interview was attempted in the presence of Investigative Lieutenant JAMES J. COOKSEY.

Prior to any questioning, SEGURA was advised of the identity of the interviewing Agent, purpose of the interview, and was furnished with an "Interrogation; Advice of Rights" form, which he read. After reading this form, SEGURA refused interview and stated he had nothing to say.

Interviewed on 12/6/78 at Lompoc, California

File # Los Angeles 70-10548

by SA JAMES R. WILKENS/bef

Date dictated 12/11/78

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

EXHIBIT F

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/24/78

ROBERT BERNAL RAMIREZ, also known as Bobby, was interviewed at the Federal Correctional Institution (FCI), where he is an inmate. RAMIREZ advised he is 28 years old and is assigned to the "F" Unit at FCI, and he resides on the "E" Range in cell #3.

RAMIREZ recalled that THOMAS TREJO lived in the "F" Unit for a couple of days prior to his murder. He acknowledged that he was a good friend of TREJO and first met him in 1970 when TREJO was a youth counselor at a youth center at Santa Fe Springs, California. RAMIREZ stated he is also well acquainted with TREJO's wife. He added that he was acquainted with TREJO at the U.S. Penitentiary, McNeil Island, Washington, in 1976. Ramirez advised he did not visit with TREJO when TREJO was assigned to the "M" Unit at FCI, and he did not know where TREJO lived in the "M" Unit.

On November 11, 1978, he got up at about 7:00 AM and went down to see if TREJO was awake, however TREJO was asleep. RAMIREZ ate brunch in the dining hall sometime between 11:15 AM and 11:30 AM. As he departed the dining hall, TREJO was entering the dining hall alone. TREJO looked like he had just gotten out of bed and he made the remark, "I just woke up." At that time TREJO was wearing prison issue clothes, and RAMIREZ did not observe anyone follow TREJO into the dining hall.

RAMIREZ went to the recreation yard and took a walk, then went to the gymnasium and worked out with weights. He kept score for a basketball game in the gymnasium, returned to the "F" Unit, and watched a football game on television.

From his cell on the "E" Range he could look down and into TREJO's cell on the "D" Range, and at count time he did not observe TREJO in his cell. He thought that TREJO had a visit and that was the reason he was not in his cell.

That evening, while eating dinner, an inmate remarked to him that TREJO had been killed. He does not recall the identity of the inmate who made the remark.

RAMIREZ advised that TREJO was referred to at FCI as THOMAS or HOPPO. RAMIREZ advised that TREJO was not "strung out" on narcotics.

Concerning FCI inmate ADOLPH REYNOSA, RAMIREZ advised he has known REYNOSA for about three weeks since REYNOSA's arrival at FCI. RAMIREZ indicated he is the photographer for the "F" Unit and he takes pictures of many inmates in FCI. Because of this job, he knows just about everybody at FCI. RAMIREZ gave a photograph of himself to REYNOSA as REYNOSA is from Los Angeles and REYNOSA indicated his wife had a girlfriend to whom REYNOSA would send the photograph of RAMIREZ, so the two could correspond.

RAMIREZ advised he is acquainted with FCI inmate CHINO OLVERA, and he is acquainted with OLVERA because of his photographic duties. He never observed TREJO with OLVERA at FCI.

RAMIREZ stated he is also acquainted with TONY PALACIOS, and he noted that PALACIOS is known as "Big Nose Tony", and PALACIOS is from Leavenworth. RAMIREZ does not know if PALACIOS was acquainted with TREJO. He added that to his knowledge TREJO did not have any debts.

RAMIREZ advised he arrived at FCI in July, 1978, and he is not worried about his personal safety because of his friendship with TREJO because he is not involved with anybody at FCI.

RAMIREZ stated he attends the meetings of the PUMA organization at FCI, but he is not an officer in this group.

Interviewed on 11/14/78 at Lompoc, California

File # Los Angeles 70-10548

by SA THOMAS G. MANSFIELD and SA JAMES R. WILKINS TGM/bef

Date dictated 11/17/78

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/30/78

ROBERT RAMIREZ, Inmate Number 17160-148, was interviewed at the Federal Correctional Institution (FCI), Lompoc, California, where he is currently incarcerated. RAMIREZ was again advised of the identity of the interviewing Agents and that he was being interviewed regarding his knowledge of the fatal stabbing of THOMAS ALBERT TREJO on November 11, 1978.

RAMIREZ advised that he is known in some circles of the inmate population by the nickname of BLACK BOBBY.

RAMIREZ advised that he has known TONY PALACIOS for some time having met him when they were both incarcerated at the U.S. Penitentiary, Leavenworth, Kansas. He denied being involved with or being associated with CHINO OLVERA and in fact advised he does not like OLVERA. He also related that he has known WILLIE GOUVEIA for some time, both inside institutions and from when they were on the street together.

RAMIREZ provided the following information regarding his activities on Saturday, November 11, 1978.

RAMIREZ awoke at approximately 7:00 AM and went to breakfast with three other inmates. These inmates were identified as PELON, who allegedly works in the kitchen; SAL, a young inmate from Santa Monica; and an inmate identified as JESUS. Following breakfast, RAMIREZ went to the recreation yard until it started raining at approximately 11:00 AM. About 11:00 AM, he went to brunch, and after eating he was enroute from the chow hall back to the yard when he saw THOMAS ALBERT TREJO entering the chow hall. He placed this time as approximately 11:30 AM. At that point he asked TREJO to go to the yard to work out with him, and TREJO muttered words to the effect that he had just awakened.

RAMIREZ went back to the recreation yard and walked the track for an unspecified amount of time. The weather again became rainy and he came inside and went to the gymnasium where he watched a basketball game between some Chicano inmates and a group of black inmates. He re-

lated that he kept score for the Chicano team during this game. He continued that he left the basketball game and went back to the unit.

When questioned specifically about certain individuals believed to be involved in the homicide of THOMAS TREJO, RAMIREZ provided the following information.

On the Saturday morning in question, he saw TONY PALACIOS during the early morning hours in the main corridor, however he did not walk the corridor with him. He related this was about the time that he was returning from the recreation yard. He also admitted seeing WILLIE GOUVEIA in the hallway, however, likewise did not associate with him. He continued that he did not associate with CHINO OLVERA and reiterated he did not like CHINO OLVERA. He stated he saw "CHAMP" REYNOSO at breakfast; however, did not associate with him during the day. Regarding PEDRO FLORES, RAMIREZ advised he knows who he is, but does not associate with him. He denied knowing any inmate by the name of RICKY RESENDEZ.

RAMIREZ was questioned as to his possibly seeing THOMAS TREJO ironing near the front door of "F" Unit during the early morning hours, November 11, 1978, and he stated this was not so. RAMIREZ denied any knowledge on the part of THOMAS TREJO in any Mexican Mafia type activities. He likewise denied being a Mexican Mafia member himself.

RAMIREZ advised that he knows STEVE KINARD in "K" Unit; however, did not see him on Saturday, November 11, 1978, and knows nothing about any possible Mexican Mafia association on the part of KINARD.

RAMIREZ once again advised that he considered himself a very close friend of THOMAS TREJO; however, since he could provide no information in this matter, he made it clear that he wanted to see the killers of THOMAS TREJO "get their own on the yard".

Interviewed on 11/20/78 at Lompoc, California

File# Los Angeles 70-10548

by SA JAMES R. WILKINS and SA ROBERT J. LADD
JRW/bef

Date dictated 11/24/78

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

DECLARATION OF WILLIAM KINDIG

I, WILLIAM KINDIG, declare under penalty of perjury:

1. I am a corrections supervisor of the Administrative Detention Unit, (ADU) Federal Correctional Institution, Lompoc, California. I am familiar with the policies and procedures governing the operation of the A.D.U.

2. There is no limitation on the number of telephone calls which may be made by an inmate housed in the A.D.U. Rather, an inmate wishing to make a telephone call needs to notify an A.D.U. staff member of his desire to make a phone call. This staff member then informs the inmate "Parent team", that is the unit to which the inmate was assigned in the general population. This staff member, consistent with his or her schedule and the availability of telephones will make a phone available for the inmates use in the A.D.U.

3. In the instance where an inmate states he wishes to speak with an attorney a special attempt is made to quickly make a telephone available. Such calls are not monitored by prison officials.

4. The foregoing is known to me of my personal knowledge and if called upon to testify I would do so competently.

5. This declaration has been read to me by Assistant United States Attorney Bert H. Deixler and I have authorized him to sign it on my behalf.

EXECUTED: This 2nd day of September, 1980.

/s/ Bert Deixler

BERT H. DEIXLER

Assistant United States Attorney

MICHAEL J. TREMAN
Attorney at Law
8 E. Figueroa, Ste. 230
Santa Barbara, CA 93101
(805) 962-6544, 963-3569
Attorney for Defendant
WILLIAM GOUVEIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR 80-535-MML

UNITED STATES OF AMERICA, PLAINTIFF,
v.

ADOLPHO REYNOSO, WILLIAM GOUVEIA, ET AL.
DEFENDANTS.

DECLARATION OF MICHAEL J. TREMAN IN SUPPORT
OF MOTION TO DISMISS THE INDICTMENT AND
APPLICATION FOR AN ORDER PERMITTING THE
LATE FILING OF MOTION

DATE: September 8, 1980
TIME: 2:00 p.m.

I, MICHAEL J. TREMAN, declare:

That I am an attorney at law duly authorized to practice in the Courts of this State and the U.S. District Court for the Central District of California. I was appointed by the court on July 14, 1980, to represent defendant WILLIAM GOUVEIA in the above entitled proceeding, and am fully familiar with the facts and circumstances in this case.

On July 15, 1980, I made a written request to the Office of the United States Attorney for the material specified in Federal Rules of Criminal Procedure, Rule 16, including copies of documents and tangible objects and reports of examinations and tests. Thereafter, in a motion which was heard on August 18, 1980, I requested information concerning the date on which certain specified items were seized or otherwise came into the possession of law enforcement and

the location that the items were initially seized from or possession otherwise obtained from by law enforcement. I also requested the records with regard to the disciplinary action taken against my client with regard to the death of Mr. Trejo. On the date of the motion the government agreed to supply the aforementioned material which I had requested and the court further ordered information concerning persons housed at Lompoc at or near the time of Mr. Trejo's death to be provided to defense counsel.

A copy of what purports to be a roster of inmates at F.C.I. Lompoc during November of 1978 was received by me on August 22, 1980. On August 23, 1980, I received unit rosters and lists of inmates who came to Lompoc during the week of November 4-11, 1978. The only material concerning Mr. Gouveia's handling by the authorities at Lompoc and the F.B.I. as a result of Mr. Trejo's death was not received until August 29, 1980. A copy of this document, an incident report, which was apparently prepared and delivered on December 13, 1978, is attached hereto as Exhibit "A."

In preparation for the Motion to Dismiss I had obtained and reviewed the material used in a similar motion in another case before the United States District Court for the Central District of California, namely the case of the *United States v. Robert Eugene Mills and Richard Raymond Pierce*, case number CR 80-278-WGP. Due to the fact that my client's recollection of what took place with regard to this handling at Lompoc in November, December and January of 1978-1979, was very hazy, I took copies of the exhibits which were used in the Mills case, together with copies of the exhibits which were being submitted on behalf of other defendants in this case, to my client so that he could review them and hopefully thereby refresh his recollection as to what material he had received and when he might have received it. This process was successful to some degree and he was able to provide me with more accurate information concerning the documents he had received. His current recollection in this regard is contained in the declaration we have now been able to prepare and have submitted for filing in support of the motion to dismiss.

Upon receipt of the information concerning other inmates in the Lompoc institution, I began to try and locate the six witnesses whose names I had specified in my discovery motion. These witnesses are named in the transcript of Mr. Gouveia's interview with the F.B.I. agents, a copy of which was supplied by the government, and is attached hereto marked as Exhibit "B". The process involved in trying to locate these individuals involves contacting the Locator for the United States Bureau of Prisons and providing them with the name and prison number of the person being sought. This source is able to provide you with information concerning the location of the individual if they are still within the United States Bureau of Prisons system, or the name of the institution from which they were released. Thereafter, you have to call the particular institution and convince them to provide you with access to their records which in some cases show where the person was released to. Using this method we have been able to gain information concerning four of the people we are looking for. Although in only one case have we been able to actually contact the individual and interview him by telephone in order to confirm that he is the correct person. The person we have been able to locate is Mr. Packard and he resides in the Scottsdale, Arizona area. We believe that the inmate known as "Danny" has a last name of Padillo, and is currently located in the Fresno area. Mr. Olavera is reported to have been released from June in 1979, but is apparently back in custody. The information concerning Steve Broughton is that he was either released from Terminal Island in June of 1980, or is still there. We are in the process of confirming his location and identity.

Due to the fact that the government claims Mr. Gouveia was present in "M" unit at the time of Mr. Trejo's death, we have attempted to secure information concerning the location of all of the inmates who were purported to be in "M" Unit in November of 1978. We wish to interview these persons in order to determine if any of them knew him and could testify as to whether or not he was present. The Bureau of Prisons locator refused to provide us this information over the phone due to the number of names involved,

and indicated to us that we had to get the information we desired by way of a written request. This request was made by sending the locator the roster of inmates of FCI Lompoc for "M" Unit which was received on August 22, 1980. This roster is attached hereto as Exhibit "C." In an effort to try and determine if any of the former "M" Unit are still located at Lompoc, on August 28, 1980, we sent the "M" Unit roster as supplied by the government on August 23, 1980, to the institution. A copy of this roster is attached hereto as Exhibit "D." To this date there have been no responses to either of our written requests.

In analyzing the information which have been provided by the government to date in this case, I have discovered several problems which the long delay before bringing this indictment have apparently occasioned. Most of these problems appear to be in the area of identifying and locating witnesses on the one hand, and then trying to get any meaningful information out of them in an interview. For instance, in Mr. Gouveia's statement to the F.B.I. he mentions the name of a Rickey Resendez. A Ricardo Resendez, F.B.I. number 873149R5 is listed on the F.B.I. report from the latent fingerprint section identification division as being one of the persons whose fingerprints were evaluated by the laboratory in connection with Mr. Trejo's death. Mr. Resendez' name does not appear in the "M" Unit roster which is attached hereto as Exhibit "D," and I was unable to find it in any of the other locator and unit rosters which were provided by the government on August 23, 1980. The name Resendez and the number 1696-163 does appear under the unit roster for housing unit "M-A" Exhibit "C" hereto. However, it does appear to have been written in at a different time from the other names on that roster, and in a different handwriting. To this date we have been unable to obtain information concerning Mr. Resendez' current location.

Another example can be seen in the following information. On August 22, 1980, I was advised for the first time that the body of Mr. Trejo was found in cell number A-18 in "M" unit. A review of Exhibit "C" discloses that apparently the name "Macias" is listed in connection with that housing

location. There is also information which reflects that a Macias bearing number 1237 is housed in M Unit, cell B-6. (See Exhibit C.) The name Macias does not appear anywhere on the M Unit roster, Exhibit "D", however my review of all of the material contained in the locator and unit rosters shows a "Macias" bearing number 13674-116 in D Unit and a "Macias" bearing number 14237-168 in "H" Unit. The report of the F.B.I. fingerprint examination reflects that an Amando Macias, F.B.I. number 950199A, has his fingerprints identified on an 8x10 $\frac{1}{2}$ piece of unlined paper bearing mathematical computations and a white shoebox, both of which the government contends were found at the location where Mr. Trejo's body was found.

It is interesting to note that at this same location the government found a brown paper bag bearing handprinting beginning with the name "Sanchez." This bag also contains two palm prints and which were apparently not correlated with any of the defendants in this case. My review of the locator and unit rosters show a total of five persons with the last name Sanchez, two of whom were in "J" unit, one of them in "H" unit, one of them in "M" unit, and another one in either "A" or "O" unit. There is even a listing for an individual quote "Macias-Sanchez" in "L" unit.

The locator for the Bureau of Prisons has advised us that they cannot identify Mr. Resendez by either name or number. And that Macias bearing number 14237-168 was released from Terminal Island on March 1, 1980. That is the most current information we have concerning either one of those individuals. I must point out to the court, that the information I have been receiving through the locator is in my mind subject to a great deal of questioning as to its accuracy, because their records indicate that Mr. Gouveia was released from the institution at Leavenworth, Kansas, on September 24, 1979. They do not have any information concerning his custody in Marion, or his present location here in Los Angeles.

In my opinion, if counsel had been available to the defense at an earlier date, perhaps in the late part of 1978 or the early part of 1979, we would have been able to locate the majority, if not all, of the witnesses we are seeking, in-

terview them and thereby be in a reasonable position to present evidence on behalf of Mr. Gouveia. In addition to the names of nondefendants I have mentioned, there are other names contained in the F.B.I. laboratory reports, this being individuals whose fingerprints were evaluated in connection with the items found at the scene of the location of Mr. Trejo's body. It seems apparent to me that the government considered these people as potential suspects at some point in time, and I would like to have access to them in order to see if they could provide exculpatory material concerning Mr. Gouveia.

On another but related matter, the government has indicated that the only search which took place in this case occurred in cell A-18 in "M" unit. In view of my prior discovery request, which the government indicated they would comply with, I presume that this means that all of the items sent to the F.B.I. Laboratory for blood and fingerprint analysis were found at that location. Listed in the items which were sent to the F.B.I. Laboratory for blood analysis are two pairs of boots and two pairs of shoes. Mr. Gouveia has indicated to me that when he was finally released from solitary confinement, at Leavenworth, he began to inquire concerning his personal possessions from his cell unit in Lompoc. Custody of all of these items was apparently taken by the officials at Lompoc when he was placed in segregation there on November 11, 1978. Eventually some of this material was returned to him, but in particular he remembers that a pair of shoes which he had purchased was never returned, and a number of photographs were retained in Lompoc and subsequently sent to him care of the warden at Leavenworth. There was apparently an impression of some footwear which was located on a locker door in the Lompoc institution. This impression did correspond in size and design with the sole of one of the pairs of shoes sent to the laboratory for evaluation, but because there were no unique identifying characteristics, definite conclusions could not be reached. It was determined that the two pairs of boots and the other pairs of shoes did not make the impression on the locker door. Thus far I must presume, without knowing, that the shoes involved in all of

these evaluations were not the pair taken from my client, and I further must presume that they belonged to the resident of cell A-18 in "M" unit. That individual would appear to have been, at least at one time, the individual named Macias bearing number 1237. In all of the housing unit information which has been provided me to date, I can find nothing concerning Mr. Trejo.

Due to the amount of work involved in trying to analyze the information which has been given to us to date by the government in support of this motion, the fact that it was necessary to use material submitted by other counsel in both this case and other cases to refresh Mr. Gouveia's recollection, and considering the dates upon which the government material which I mentioned above has been forthcoming, I found that it was simply impossible to put together the necessary evidentiary material which I believe we need to submit in support of this motion.

WHEREFORE it is respectfully requested that the court grant my request to permit late filing of this motion and furthermore that it grant the defendant's motion for dismissal of this action.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of September, 1980, at Santa Barbara, California.

/s/ Michael J. Treman

MICHAEL J. TREMAN
Attorney for Defendant
WILLIAM GOUVEIA

RANGE A

RANGE COUNT _____

TOTAL UNIT COUNT

95

INMATE NUMBER	INMATE NAME	MISC.	CELL INMATE NO. NUMBER	INMATE NAME	MISC.
	CLERK'S OFFICE		1	CLERK'S OFFICE	
11804	INMATE SENT %	PER	5	INSTRUCTION	-
19016	DUNCAN	TH-	3		
8422	HOYERZAC C%	W-	4		
36017	COLEMAN	C-	5		
36563	MALACIOS	M	6		
14791	INVIS M%	W	7	RESENDEZ	1696-133
54233	REYES	W-	8		
11723	MICHAEL	W-	9		
14137	MITCHELL	O	10		
2749	CLAYHOLE	O-	11		
19674	CESARE	M	12		
2199	CANO	W-	13		
35493	AUILA-MACIAS	WT	14		
13927	KIANTE	WT	15		
36393	FRANKLIN	R-	16		
35306	MARSHALL	O-	17		
			19		

(2)

17

M-A

INCE B

RANGE COUNT _____

TOTAL UNIT COUNT _____

STATE NUMBER	INMATE NAME	MISC.	CELL NO.	INMATE NAME	MISC.
-	CLEAR'S OFFICE	-	1	CLEAR'S OFFICE	-
3286	THROWER	13	2		
14808	BETHEL	100	3		
104	NICY	100	4		
1133	SEVILLE REC PART	100	5		
1237	MICIAS	1	6	A-1B	-
			7		
2941	BRITIC	1	8		
1994	AUGUAR	0	9		
6165	JACKSON	192	10		
20585	ANDERSON	10	11		
8732	PETERSON	10	12		
4262	SALAZAR-MUNOZ	10	13		
19926	THOMAS	10	14		
30087	STRAGER	10	15		
10586	BAUMGARTEN	10	16		
14087	ADOLFO-MACHUCA	10	17		
14809	GUTTERER	10	18		
14807	DAVIS	10	19		

(15)

16

H.G.

GE: C

RANGE CAPACITY: 19

TOTAL UNIT COUNT: _____

RANGE COUNT: _____

TE ER	INNATE NAME	ROOM NUMBER	CUSTODY	ASSIGNMENT	MISC.
		1			
'40	LAING	'2-	MED	PLUMB. SHOP	W
134	RAMOS	'3-	MED	ECS	W
'13	MICKLEVITZ	'4-	MIN	Record Office	W
'63	SUTPHIN	'5-		CARP. SHOP	W
'20	GURHARD	'6	COMM	SAF + SAN	W
'12	BABIN	'7-	COMM	"	W
		8			
		'9			
729	CLEMONS	'10		MINCH. S110A	B
79	LAGUNAS	'11	MED	ECS	W
115	ORE JEL	'12	MED	CHEM. ORD	B
'36	HUBBARD	'13	MED	ED DEPT	IS
'14	LORIS	'14	MED	ECS	W
75	WEISBERG	'15	COMM	REC DENT	W
'05	CARPENTER	'16		CORR-ORD O/W	B
0	TREVAILLION	'17	MIN	.ORI. - M	W
'8	ROBERTSON	'18	MIN	PLUMB. SHOP	W
-134	Castro, L.	'19	Clo.	F/S	W

16

M.C.

RANGE COUNT: _____

INMATE NUMBER	INMATE NAME	CELL NUMBER	CUSTODY	ASSIGNMENT	MISC
15308	MEJIA	1	MIN	ORD - M	M
		2			
		3			
19013	GARDNER	4	MED	PAINT SHOP	B
32577	OWENS	5	MIN	F/S	B
		6			
36027	HENDERSON	7	COMM	ORD - M	B
4172	WILSON	8	COMM	CCO M/M	B
		9			
		10			
36649	BEENE	11	COMM	F/S	B
		12			
40072	REGALADO	13	MIN	HYAC / WELL UT	M
1732	VILLALOBOS	14	MED	ORD M	M
25647	NICASIO	15	COMM	MINT. - M	M
		16			
12475	MIRANDA	17	MIN	ECS	M
1428	AMPARO	18	MIN	ECS	M
5136	GUERRERO	19	MIN	ECS	M

RANGE COUNT: _____

INNATE NUMBER	INNATE NAME	CELL NUMBER	CUSTODY	ASSIGNMENT	WISG.
18512	KLIESEN	1	MIN	BUS OFC ORD	W
19249.	WATSON	2	MIN	LAUNDRY	B
35164	LOTFS	3	MED	15G	W
4895	GONZALES	4	MED	MACH SHOP/H/FAC	M
31556	JULIO - GONZALES	5	MED	ORD-M	M
31559	ARAUJO - ARAIA	6	MEED	ORD MA	M
86512	BELCHER	7	MIN	SIGN SHOP	W
34714	GONZALES	8	CLO	F/S	M
31558	ANDRADE	9	MED	ORD-M	M
13843	PHILLIPS	10	COMM	COFF ORD.	I
04648	MORGAN	11		MIN. UNIT MAINT.	W
31562	PEREZ-MINTELLO	12	MED	ORD-M	M
33499	SANCHEZ	13	MEED	MACH SHIP	M
1943	MARISCAL	14	COMM	ORD - M	M
18920	KOSEIR	15	MIN.	WELD UT / AD. BLDG. ORD.	W
14170	PARRISH	16	MED	REC/WELD UT	W
53451	LUDLOW	17	MED	SLR	W
14435	PADILLA	18	COMM	UNIT CLERK	M
13682	COWLEY	19	MEED	REC. - DEPT.	W

(16)

REF

UNIVERSITY LIBRARIES BOSTON

RANGE: E

RANGE CAPACITY: *i?*

TOTAL UNIT COUNT: _____

RANGE COUNT: _____

INMATE NUMBER	INNATE NAME	ROOM NUMBER	CUSTODY	ASSIGNMENT	MISC.
8555	MENDOZA	1	MED	MACH-UT	M
14802	PANGELINAN	2	MED	... (F/S)	O
		3			
5532	MARTAN	4	L-KO	F/S	M
51795	CASTILLO	5	L-KO	F/S	M
8734	VASQUEZ	6	MIN	CLOTHING RM	A
4715	TORRIS	7	MIN	CRU H	M
		8			
5317	THOMAS	?	MED	F/S.	S
4796	MADDIX	10		CONST #3	N
2623	BYERS	11	MIN.	ORD-H	B
14012	HOUSTON	12	COM	PERS. ORD	W
17731	PERRY	13	COMM	ELEC SHOP	W
19652	CLARK	14	COMM	F/S	W
14189	JONES	15	MED	SIGN FACT.	B
15957	PERRY	16	COMM	(HOSA)	W
19325	DOOL BOS	17	MED	DCC DENT	W
6528	VIGIL	18	MED	BARBER UT	M
35770	THOMAS	19	COMM	LOCKER	B

565

M UNIT

ANDRADE -RODRIGUEZ	31558-120						H+AC
ANORADE	87098-136	M	C-2				
ANPARO	01428-168	M	C-2				
APAVIO-AR170	31559-120	M	C-2				H+AC
BABIN	18712-148	M	C-2				
BELCHER	86512-132	M	C-2				
BEENE	36619-118	M	C-2				
RYERS	02623-156	M	C-2				
CARPENTER	35405-136	M				P/W	CONC C
CASTILLO	51795-146	M	C-2				
CHASE	17508-148	M	C-2				
CLARK	19652-148	M	C-2				
CLEMONS	33920-136	M	C-2				MAI
CONSTANTINS	35200-136	M	C-2				
COLDREY	13682-116	M	C-2				REC
DUBOIS	19325-143	M	C-2				REC
ELKINS	14799-116	M	C-2				
GARDIER	19013-148	M	C-2				
GONZALES	04395-156	M	C-2				
GONZALEZ-JULIO	31556-120	M	C-2				O
GONZALES	34714-136	M	C-2				
GUERRERO	05136-136	M	C-2				TAF-S
GUTHARD	19202-143	M	C-2				
HENDERSON	36027-136	M	C-2				CR
HOUSTON	14012-116	M	C-2				ODP-PF
HUBBARD	14086-148	M	C-2				ED PE
HUBBARD	54114-146	M	C-2				UNAS
JONES	14103-116	M	C-2				SIE
KLEISEH	10512-148	M	C-2				
KOSER	18920-148	M	C-2				FRONT L
LAGUNAS	14179-116	M	C-2				
LAINÉ	18740-143	M	C-2				
LOTTS	35161-136	M	C-2				
LOPEZ-DARDEA	47514-146	M	C-2				F
LUCLOU	53151-146	M	C-2				TPA
MADDUX	14796-116	M	C-2				CONC
MARTAN	05532-156	M	C-2				
MENUDOZA	100555-158	M	C-2				MAK
MEUIZ-MERUAIDEZ	15300-168	M	C-2				
HICKLEVITZ	31213-120	M	C-2				REC
MIRANDA	12475-168	M	C-2				
MORGAI	04648-116	M	C-2				UNIT
NICASIO	02567-156	M	C-2				
ORTIZ	199361-131	M	C-2				
OMENIS	32577-136	M	C-2				
PADILLA	14431-116	M	C-2				UNIT
PANGELININI	14002-116	M	C-2				
PARRISH	14170-116	M	C-2				REC DIF
PERRY	19731-140	M	C-2				FIRE
PERRY	65957-132	M	C-2				NO
PEREZ-MARTELLO	31562-120	M	C-2				C
PHILLIPS	13043-116	M	C-2				

EXHIBIT D(1)

GALADO	14072-115	M		HFAC / ORO
ROBERTSON	14790-116	M		PLUN
RODRIGUEZ	14727-116	M	1616	CCS APP
SAVILLE	04133-156	M		REC
SANCHEZ	33499-136	M		MACH 51
SUTPHIN	20163-145	M		CALA 51
TUQUAS	05317-168	M		HOLD
TUQUAS	32710-136	M		(E)
TREVALLION	00780-192	M		CRD FI
TORRIS	04715-160	M		ARIA
VISQUEZ	08734-289	M	MIN	CLO 5
VIGIL	06528-156	M	145D	PROP 1-
VILLALOBOS	01732-169	M		OBO
WILSON	04172-168	M		CLO 11
WEISBERG	14575-116	M	101M	RFC DEF
WATSON	19249-101	M		LNDY

M - UNIT 71 CON'T.

ANDERSON	20135-148	
ANTHONY	19199-148	
AUGUST	99944-131	
BETHEL	14003-116	
BUSIC	03021-131	
BAUMGARTEN	20586-148	
CASTILLO	24057-136	
CLABAUCH	19410-148	
CADDY	03131-156	
DUCINA	40100-115	
DAVIS	14007-116	
FLORES	19600-148	
GARNES	30355-136	
HAPPIN	14421-116	
HEIM	34784-136	
HOYERDAHL	00422-166	
ISRELL	21900-168	
JACKSON	16165-143	
JEFFERSON	19450-148	
LOCKLEAR	35711-136	
MAIARD	15786-148	
HEY	00109-131	
HURIEZ	16764-148	
PETERSON	18723-148	
POTTER	19641-148	
ROBERTS	31183-136	
ROGGE	36532-136	
RYAN	14100-116	
SALVIEZ	01622-160	
STRAGER	30037-117	
SALAZAR	24262-149	
THOJAS	99926-131	
THROPER	03206-159	
WAGNER	14000-116	

EXHIBIT D-6

EXCERPT OF TRANSCRIPT OF HEARING
ON MOTION TO DISMISS INDICTMENT

September 8, 1980

[20] MR. LEVINE: Now, there are just a couple of other facts I wish to bring to the Court's attention. I've attempted in the moving papers and in the affidavits that were filed with them to show you some of the problems that we're now encountering with the fact that we only know some witnesses by nicknames. Other witnesses are difficult to find because they're spread in various institutions. Two of the witnesses, as we showed in the affidavit, are now no longer among the living; those being Mr. Lowe and Mr. Thompson. I've further been advised last week that yet another witness, who was on our list of alibi witnesses that I submitted to the government [21] I believe about ten days ago, a Mr. Carillo, is also dead. According to his probation officer or parole officer, he died in April of 1979, after his release from custody.

With respect to several of the other witnesses whom I have listed on the notice-of-alibi list, of which there are about seven to ten names, I have still not located three of the people despite the rigorous efforts of the Bureau of Prisons and the inmate locator in Washington, D.C., and I have letters out to the last known halfway house that each of those people were at to try to locate their current residence, so that I can have them subpoenaed for the trial.

Now, with respect to all of these witnesses, I have to admit to the Court, I've not interviewed them. I don't know to what extent they can actually say Mr. Segura was somewhere else at the exact time of the murder. However, in interviewing Mr. Segura and talking to other people who are involved in this case, we submitted that list of names on our alibi list because we believe that once those witnesses are contacted, they will remember that they were with Mr. Segura at various times during that day, and perhaps if we have the opportunity to interview them at length, we can actually pinpoint the exact hour and time of that day that they were with him in a location other than the cell of inmate Trejo, and that's where he died. These are difficult things that I'm not the only lawyer facing in this case. I'm

[22] sure the Court can appreciate that with a span of two years and the manner in which people's names are remembered and the manner in which they get shifted around the prison system, that all of the lawyers in this case are facing similar problems. I could only depict in my affidavit the ones that I'm facing. I think that they're substantial. I think that they were caused by the delay in this case, which is very, very lengthy.

* * *

[23] THE COURT: Let me see if we can clarify the facts. The murder in this case occurred on what date?

MR. LEVINE: November 11, 1978.

THE COURT: And it may be in your affidavit, but when, if at all, was your client informed that he was at least under suspicion for the commission of that offense?

MR. LEVINE: I believe he was first put in the isolation unit on December the 4th. That's stated in his declaration, submitted as part of the motion. So that was, say, three weeks after the alleged commision of the crime.

THE COURT: All right. But was there any indication to him, such as some administrator in the prison facility making an accusation or anything at all that you're aware of, which would have put him on notice that he was at least a suspect in this case?

MR. LEVINE: At that stage, that's correct. That's in his declaration.

THE COURT: Well, prior to December the 4th.

MR. LEVINE: No.

THE COURT: So prior to December the 4th, there was no objective activity which would put a reasonable man [24] on notice that he was under suspicion for this offense?

MR. LEVINE: I'm not sure. He may have been interviewed by the FBI during that period. I don't recall the date under which he was interviewed. But I'm not sure whether that would rise to the level to put him on notice that he was going to be charged with the offense. But in any event, the first real knowledge or suspicion that he would have had as a reasonable man to that effect would have been his isolation in the I Unit at Lompoc.

THE COURT: Now, is the Mills case factually different in any way than our case in terms of the time at which the defendant was put into isolation?

MR. LEVINE: I can't speak to that. Only the length of the delay, to my knowledge, makes it different.

THE COURT: My reading of the order dismissing the indictment in United States v. Robert Eugene Mills leads me to believe that within hours after the murder, which was on August the 22nd, 1979, the two defendants had been placed in administrative detention, as opposed to, in our case, a three-week hiatus. That may or may not be significant, but I do seem to see that distinction.

MR. LEVINE: As I recall, that was a distinction, your honor. I don't think it has any significance. I think the significant factor is the request for a lawyer, the inability to have that kind of assistance, and here the [25] enormity of the delay. I don't think, in view of the prison documents showing that the investigation had reached a conclusion on December 13th of 1978, that the further shoring up of the government's case through the next twenty months, as depicted in the Wilkins and Deixler affidavits in opposition to the motion, is very relevant, in view of the prison's own internal document, which was evidently substantial enough to put the defendant into an isolation unit for a period of—an endless period at that point. It lasted approximately twenty months.

THE COURT: Let's discuss the standard that the Court should apply. I'm reading from Arnold v. McCarthy, a Ninth Circuit case, 566 F.2d 1377, which reads as follows: "The due-process test for impermissible preaccusation delay requires a delicate balance of circumstances of each case." Citation to United States v. Marion, Lavasco, and Mays. "Primarily, we must compare the gravity of the actual prejudice shown to the reasons for the delay." Then citation to Lavasco.

Do you agree, Mr. Levine, that that is the standard that the Court should apply?

MR. LEVINE: Yes.

THE COURT: All right. Let's talk about it, then. The one sentence seems to sum it up: "Primarily, we must com-

pare the gravity of the actual prejudice shown to the [26] reasons for the delay." What, in your view, is the actual prejudice that you have factually demonstrated here?

MR. LEVINE: I think basically there are two. One involves the loss of witnesses. Obviously, the death of a potential witness is fairly apparent. But when you couple that with the fact that even though there are six or seven other potential alibi witnesses that we've listed, with not having been able to interview those people, we don't know, with the passage of time and also with other factors contributing, to what degree they would be valuable witnesses, and we only know that Mr. Lowe, Mr. Thompson, and Mr. Carillo, who are also on the list and also whom we didn't interview, were also potential witnesses. So that here's a defendant twenty months later, or now almost two years later, who barely remembers the names of witnesses and comes up with several of the names, and a good percentage of them are dead or can't be found. That's a prejudice I think the Court can consider. We're not just dealing with dim memories here, although that's certainly a problem.

THE COURT: Well, let me read on, and then let's apply this law to what has been demonstrated thus far. I'm reading on in *Arnold v. McCarthy*.

"Proof of actual prejudice due to loss of a witness must be 'definite and not speculative.'" Citation to *United States v. Mays*. "The assertion that a missing witness might [27] have been useful does not show the 'actual prejudice' required by Marion." and again *United States v. Mays*, quoting *United States v. Galardi*, a 1973 Ninth Circuit case.

Now, what demonstration has there been that we should discuss or that the Court may consider as to the actual prejudice? Apparently, again, as this case states, the loss of a witness may or may not demonstrate actual prejudice, and as to the dead witnesses, for example, don't we have to go further than saying a potential witness has died? Let me ask you rhetorically, does the death of a potential witness per se result in actual prejudice, or must the defendant, the moving party, go somewhat further than that?

MR. LEVINE: I think if he were relying only on the fact that a potential witness had died, I think we would have to go further. I think he'd have to have some further indication as to what that witness would testify to, and he'd have to show in that indication that the testimony would be exculpatory or likely to lead to an acquittal. But here we're not moving for a dismissal only because three people died. I think we're using that fact as a further example of the difficulties this individual now faces two years later in investigating this case and preparing himself for the charges that the government is going to bring.

Now, remember, the government doesn't have these [28] difficulties, because at the time that they run into a witness, shortly after the commission of the offense, they get a statement while it's fresh in the witness's mind and they work their case up, as they've indicated in their declarations they did in this instance. Of course, it took them twenty months to do it here. But nevertheless, they don't have the difficulty that Philip Segura has. He sits here now facing probably the most serious of charges that can be levied against an individual, and the best he can come up with, if the Court wants to look at the alibi list, are nicknames of people, because he only lived in Lompoc for a period of three weeks before he allegedly committed the murder. And the difficulties that he's facing right now, twenty months later, are insurmountable. And why are they insurmountable? One, because he wasn't given a lawyer when he requested it, and two, because he was kept out of the prison population, with the inability to talk to these people, for a period of slightly less than two years, during which time the government is proceeding with what they say is due diligence to put their little package together, and it's because of that delay that he's faced with the situation he's faced with now. He didn't create it. I don't think this situation, your Honor, differs from the Mills case, with the exception of the delay, which makes it even more difficult for the Court to deny this motion.

[29] THE COURT: All right. Have you completed your thoughts in this matter, Mr. Levine?

MR. LEVINE: I think I have. Thank you.

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[74] MR. WALSH: Your Honor, I'm Joseph Walsh, moving to dismiss the indictment on behalf of Robert Ramirez. And we're alleging three separate legal grounds. First, the [75] denial of the right to speedy trial under the Sixth Amendment, the denial of the right to due process and speedy trial as guaranteed by the Fifth Amendment, and a denial of a right to counsel.

The critical facts that are different in my client's case from the remaining defendants are that between November 11, 1978, and December 4, 1978, my client was not a suspect in the murder during that three-week period, and it was only until December 4th, when he was interviewed by the FBI—and I've attached the FBI report as the first exhibit to my moving papers—that he was informed by the FBI that he was a primary suspect in the murder of Thomas Trejo, and from that date on he was placed in solitary confinement and removed from the general inmate population and not allowed to mingle or associate with other inmates within the institution in order to do whatever investigation he wanted to do in order to locate possible witnesses.

Significantly, in the FBI report of the December 4th interview, the one that occurred three weeks after the murder, after which time Mr. Ramirez was placed in solitary confinement, it was on that date that he had requested a lawyer, and that appears in the last page of the FBI report, and I've underlined that portion, where during the conversation he did in fact request a lawyer.

* * *

[77] And the reason tht he was placed in solitary confinement I think is adequately demonstrated by the supplemental Exhibit A which I filed, which is the incident report of the Bureau of Prisons. And as of that date, which was December 13, 1978, the description of the incident which caused the Bureau of Prisons to hold the hearing was that based on confidential information and inmate interviews, Robert Ramirez was in fact being charged with the fatal stabbing of Thomas Trejo. And it states that that's the reason [78] he was placed in solitary confinement on December

4th. So I think it's clear that the activity of the prison in placing him in solitary confinement was precisely related to the stabbing incident.

Another significant factor in the incident report, on the second page, the last paragraph indicates that the prison's investigation—or it states below that "Inmate Ramirez was placed in I Unit on December 4, 1978, pending investigation by both the FBI and the investigative supervisor. Investigation completed that date"—and then, in parentheses, "13 December 1978"—"and now referred to the unit team for disposition." So at least this one disciplinary unit had completed their investigation of the murder as of December 13, 1978, and apparently had come to the conclusion that my client, Mr. Robert Ramirez, was a prime suspect as of that date, which is approximately one month after the stabbing.

If I can relate now what evidence I am offering to the Court as proof of prejudice to my client because of the long delay, I have filed a notice of alibi, and also, in connection with the motion to dismiss, my client has filed a declaration, and in that declaration he has indicated that one of his alibi witnesses is dead and that four of them he knows only by nicknames, and that three of his alibi witnesses have been since released from custody, and at the present time the whereabouts of those inmates are not known. [79] Since that time I have employed an investigator, and we're currently conducting what investigation we can now to work back to the point in time when they were released from prison to locate those witnesses. But as of the present time, we have not located the whereabouts of those three inmates.

The offer of proof is that all of those witnesses—specifically, the four persons known only by nicknames—were persons that my client saw and spoke with in the gymnasium around the time of the killing, as listed in the notice of alibi, and also, the three witnesses whose present whereabouts are not known but whose names are known, Arturo Garay, Jose Mahia, and David Jaramillo, those are three witnesses that my client saw and spoke with in the gymnasium at or about the time of the stabbing, and Alberto Rosas, the one deceased witness listed in the notice of alibi, is one person that my client saw and spoke with in

the gymnasium at or about the time of the stabbing, as set forth in the notice of alibi that has been filed with the court.

* * *

[85] THE COURT: I'm trying to establish whether or not it's your position, for example, that Mr. Ramirez was in some way held incommunicado for twenty months.

MR. WALSH: No. He was completely segregated from the entire inmate population.

THE COURT: I understand that from his affidavit.

MR. WALSH: But he did have family visits. Some were allowed him; a limited number per month, less than granted prisoners in the normal prison population. And I believe he did have some limited telephone rights, which were [86] severely limited from those prisoners in the general inmate population. So he wasn't held in complete incommunicado, but he was not in a position to hire private counsel.

* * *

[93] MR. ARAUJO: These are the records that— specifically, the incident report that is drafted by the Bureau of Prisons. I believe there might be a document relating to the decision of the Bureau of Prisons with regards to the incident, disciplinary hearing, and—

THE COURT: Excuse me for interrupting, Mr. Araujo, but are these comparable, or at least generally comparable, to some of the affidavits I've seen or exhibits I've seen submitted?

MR. ARAUJO: Well, they are generally comparable, your Honor, but specifically, what the specific details on those documents will be, I don't know, since I haven't seen them.

THE COURT: I understand. Let me interrupt—

MR. ARAUJO: They're comparable, yes.

THE COURT: All right. Let me interrupt and ask the government. Did the government agree to submit to Mr. Araujo these disciplinary documents?

MR. DEIXLER: Yes, your Honor, we did. Unfortunately, the documents I believe are held in Mr. Reynoso's file, which is in Illinois. We requested them immediately by telex the morning after the hearing. We still haven't received the documents. The government would certainly be prepared to enter into some stipulation, so that the Court

could rule on [94] the motion to dismiss. I'm confident that what is contained in the other incident reports would be contained in Mr. Reynoso's report. The government is willing to stipulate that he asked for an attorney and the government is prepared to state that no attorney was provided for him in connection with the IDC hearing and that he received a notice of discipline as a result of that hearing. I'm not sure what beyond that Mr. Araujo wishes to elicit.

MR. ARAUJO: Well, I would like him to stipulate that the records would indicate that the Bureau of Prisons was informed by the FBI that their investigation was complete as of December the 13th, 1978. That is the additional stipulation. And that he was being held in segregated confinement not merely for the purpose of the discipline as a result of the administrative hearing, but also being held pending the investigation by the FBI of criminal charges. If he's willing to stipulate to those two facts, then I would be willing to stipulate as to what the content of the records are.

MR. DEIXLER: Well, your Honor, I'm willing to stipulate to the exact language as contained on Mr. Ramirez'—

THE COURT: Well, perhaps you can show it to Mr. Araujo, and it may be agreeable with him.

MR. DEIXLER: Yes.

(Brief pause.)

[95] MR. ARAUJO: Well, your Honor, I would be willing to stipulate to the effect that inmate Reynoso was placed in I Unit on December the 4th, 1978, pending investigation by both the FBI and the investigative supervisor. With regards to when the FBI completed the report, I believe there is—with regards to Mr. Levine's client, his records indicate that the FBI completed their investigation on December the 13th, 1978.

MR. DEIXLER: If Mr. Araujo can show me the document that says that. The fact of the matter is that the FBI didn't complete their report until August of 1980, when we finally got the last bit of investigation back.

THE COURT: Well, I take it, then, you're not willing to stipulate that the FBI investigation was completed on December the 13th, 1978, or are you?

MR. DEIXLER: I'd be willing to stipulate to it in the context in which it was used in connection with somebody else's IDC report. If it's used—

THE COURT: Well, if there's some ambiguity, let's not stipulate to another ambiguity. It won't assist the Court of Appeal or this Court either.

MR. DEIXLER: That's what I'm concerned with. If they can narrow it down when they say the investigation is complete, what it is that Mr. Araujo means by that, I think we can work out a stipulation right here. If Mr. Araujo wants [96] me to stipulate to the fact that the entire investigation ever conducted by the Federal Bureau of Investigation in connection with the Trejo murder was completed on December 13th, I can't stipulate to that, because that's just not true.

MR. ARAUJO: Your Honor, the language I'm specifically referring to is—I believe it's Exhibit 1 of Mr. Joel Levine's motion on behalf of Mr. Segura, which states on line 14, I believe, of page 2, "On December 13, 1978, the FBI completed their investigation of this incident and did release the report back to the institution for their investigation and disposition this date."

MR. DEIXLER: The government will stipulate to that in the context in which it's used, your Honor.

MR. ARAUJO: I'm willing to stipulate to that.

THE COURT: All right. The Court accepts the stipulation. What does it mean, gentlemen, before we go much further? Let's not leave it. Apparently each of you has a different interpretation of the meaning of that particular phrase. Is it your position, Mr. Araujo, that at that juncture they could have indicted within a few days thereafter, because their investigation was complete?

MR. ARAUJO: It's my position that they could have investigated within a reasonably short period of time after that, even giving the government a sufficient amount of time to receive scientific reports for the purpose of trying to [97] establish additional scientific evidence that ties the defendants, the accused in these cases, to the crime.

With that in mind, I'd like to deal with the issue, since I think the Court has heard basically the legal arguments, but to deal with the issue of the government's reasoning for their delay. It is clear from the declaration of the FBI agent involved in this case, who I believe is Agent Wilkins, that it was as early as November the 29th, 1978, when they had established through an interview of an inmate, unnamed in

the declaration, that my client, Mr. Reynoso, was apparently involved in the killing of Thomas Trejo. Nowhere else in that declaration do they indicate that either additional witnesses were discovered or that they had information that there might be additional witnesses available to establish the guilt of Mr. Reynoso. So far as we know, their case, from the standpoint of witness interview, is substantially completed sometime during the month of January, perhaps, of 1978. It appears that at that point, on November the 29th, 1978—

THE COURT: You said January, '78.

MR. ARAUJO: I'm sorry. On November the 29th, 1978, that the FBI felt that it had sufficient evidence, certainly with regards to witnesses, to tie Mr. Reynoso to the murder.

* * *

[114] MR. TREMAN: Your Honor, the material which the government has just handed me begins with the period of time dated December 29, 1978. The documentation which I had referred to from Mr. Flores' motion would I believe begin with that period of time in November of 1978, when my client was initially put into solitary confinement at Lompoc; namely, on the 11th of November. He has reviewed those documents and advises me that basically—I'm now referring to A and B on Mr. Flores' motion—he received documents [115] similar to those two, although, obviously, they would not be exactly the same. But I do wish to make reference to them for the following purposes: I think that the November 11, 1978, Exhibit A, what I speculate to be the same for my client, because the subsequent material we have received reflects that he was on that same date put into administrative detention for the reason of an investigation on trial of crimes committed in the institution. That is significant, I think I can show later, in that since the entire time of his being placed in solitary confinement, he was treated as a suspect in a criminal matter, and I believe that he may be the only one of the defendants who at the time of his investigation and interrogation by the FBI was advised of constitutional rights, and indicated in that procedure, I submit to the Court, that at least the FBI considered him to be a suspect in a criminal case and intended

to treat him that way, as opposed to any disciplinary action which may be being considered in the institution.

Furthermore, the response, which is reflected on Exhibit B, I believe provides some information which goes to a couple of the questions which your Honor has asked earlier; one of those being in connection with when did the arrest occur if it occurred, as we contend that it had. I would point out, in reviewing the response on Exhibit B and working on my assumption that there was a similar response [116] from my client, that the administrative-detention policy of the institution reflects, as stated there, that an inmate may be placed in administrative detention pending investigation or trial for a criminal act. And you'll note there's no reference there to his being placed in that status within the institution for a disciplinary action. And then they go on to state that "Due to the seriousness of the offense for which you are under investigation"—again using the same words they used in the prior sentence—"it was not possible to complete this investigation under the normal 24-hour period." I believe that the rules which apply to the disciplinary-action approach which has been argued, I think, by the government in its papers and considered by the Court, if this was not an arrest, then the processing of that administrative action with regard to my client would have taken place within roughly a 24-hour period after his initial placement in detention on November 11.

Reading that entire memo, there is an indication that—I think, in reflecting what happened with my client, that the matter was actually subject to the control of the FBI, and in his case, he was not released back into the general population; rather, he was interrogated by the FBI on—my recollection is December 4, thereafter remained in administrative detention or solitary confinement, and subsequently stayed in that status until he was transferred to [117] a number of other institutions, and remained in that status all through the long period of transfer, which are reflected in his declaration with the dates as best he can recall them. He did not have any opportunity to preserve witnesses on his behalf beginning from day one thereafter, because he was isolated from the main prison population.

He has indicated in his declaration that he did request counsel at least in connection with the administrative pro-

ceedings, and the documents that the government has submitted to me today confirm those requests and that the responses discuss the fact that he made that request and whether or not he was entitled to it.

* * *

[119] With regard to those witnesses in his particular case, as I have indicated to the Court in my declaration, I did request from Lompoc information concerning the people who were in M Unit based on the roster supplied by the government. At the time of my declaration, they had not responded. They did respond, received by my office on September 5th, and they have indicated that of the people on the M Unit roster, 62 of those people are no longer in the Lompoc institution and that five of the people still are. The significance of that is that in my client's case, he was not able to talk to any of the people in the M Unit up until the period of time of my appointment to represent him in order to ascertain if they could provide information on his behalf. Certainly that has hampered us now that those people have been transferred wherever the 62 people may have gone, and we will have to go back and consider reconstructing that. Clearly, if counsel had been appointed within thirty days of what I submit is the date of arrest, I could have gotten to a [120] substantial number of people on this list with a minimal amount of difficulty.

Furthermore, in order for me to go to the institution at this juncture, what they are requiring is that we submit a written list indicating why I want to go, who I want to see, and then the institution evidently will consider making arrangements for me to do that, although I have been informed that other counsel have in fact been turned away from institutions in connection with trying to conduct their investigations in this case. Whether or not I'm going to meet that problem at Lompoc I don't know. We began asking them about these people within a day or two after my receipt of their names, and it's taken them this length of time to even tell me who's up there for me to look at. Specifically, my client had provided particular names to the FBI who up until my appointment he has never had an opportunity to have them even interviewed by someone on his behalf. And of the people that are listed there, I have been able to contact, locate, and talk to one of them, who's no long in the state, Mr. Packard. Mr. Packard has advised me

that he has some recollection about that date, but he does not specifically, at least in my conversations with him, recall times when he saw my client. Packard will be the one person in the institution who was closest to my client, in that he was housed I think immediately across [121] the hallway from him, and therefore knew him on a closer basis than some of the other inmates.

We have locations on a couple of the other inmates, and in at least two situations, the only information we have is where they were released to. But I've not even been able to confirm that those are the individuals whose nicknames my client gave to the FBI at that time. At a minimum, the FBI could have checked out the nicknames at that point and let us know who the particular individual is, but they evidently chose not to do that.

Two other people, Mr. Recendez, whose name I have discussed in my declaration to the Court and who would appear to be at least a theoretical percipient witness to the murder, in that he was housed in the M Unit very close to where Mr. Trejo's body was discovered, the institution can provide us no records with regard to him or even confirm that he was in existence, yet the FBI sent somebody's fingerprints to be examined with a name similar to that and with an identification number.

And finally, a gentleman by the name of Macias, who, the records we have been provided show, was in the cell, was supposed to be housed in the cell where Mr. Trejo's body was found, has been released, and we've been unable to locate him with regard to where he was released to or where his present whereabouts are.

[122] My client, as you can see from the material he provided to the FBI, was also in the gymnasium roughly during the period of time involved in a basketball game, but at this point in time he did not know people well enough to be able to tell me the name or even the nickname of some of the people that he saw. Presumably, he saw the same people that other counsel's clients knew better and could reflect their names on, but in some cases, those people are now deceased. So whether or not they would have provided information helpful to us I can't say at this point. I could have said had counsel been appointed back in 1978 or 1979.

Finally, as far as the question of scientific investigation is concerned, it would be correct that they did conduct some additional scientific investigation with regard to my client,

but the report on that investigation was completed and returned to the government by May 4, 1979, and as far as I can tell, there has been no further investigation of anything concerning my client, both his fingerprints or any other physical characteristics, because the government had them all in their possession prior to May of '79 and apparently submitted them to the FBI for examination. It appears that they were completed with regard to my client by May 4 of 1979, and ever since that period of time, I think they could have gone forward with an indictment against him if they had chosen to do so. I cannot see anything in the [123] material Mr. Deixler has submitted to reflect why they waited with regard to my client.

And I'll submit it with regard to that, your Honor.

* * *

[137] THE COURT: Well, the Court would indicate initially that it is unfortunate that there has been the delay that has ensued in this prosecution. I do not, however, find the delay was motivated by any intent to gain a tactical advantage over the defendants, any motivation by the government, and I find no bad faith on the part of the government. It's apparent from the Court's examination of what has occurred that there were a large number of witnesses to be interviewed, and certainly a correctional setting can complicate in many ways such an investigation.

I believe, insofar as a showing of actual prejudice, there has been an insufficient showing of actual prejudice to the defendants by the passage of time. There apparently are many potential witnesses to these events and many witnesses who will be proffered by the defense in this matter. It just seems to the Court that there has been an insufficient showing of actual prejudice of the extent and nature necessary to justify a dismissal of a murder charge.

The Court does not find that there has been a de facto arrest in this matter occurring at the time of the disciplinary procedures. The court must distinguish between administrative procedures and indictment and the respective [138] rights that are appendant to each of these proceedings. Therefore, the Court finds that at the time of the disciplinary proceedings, the right to counsel did not adhere or did not arise, and did not arise until the appropriate time after

the indictment. And of course, after the indictment, there is no pending claim of any denial of rights, such as the right of representation by counsel. The defendants in this case were not held incommunicado. The Court would observe they did have rights, albeit substantially more limited rights, than if they were in the general prison population, but they did have the rights to visitation of either family members or others and the right to telephone, write, and the right to file complaints and petitions.

At any rate, the motions to dismiss the indictment or, in the alternative, to exclude evidence in this matter are denied.

* * *

**EXCERPTS OF FIRST TRIAL IN
UNITED STATES v. GOUVEIA, et al.**

**LOS ANGELES, CALIFORNIA,
WEDNESDAY, SEPTEMBER 24, 1980**

* * *

ANTONIO PALACIOS, called as a witness by defendant Gouveia, being first duly sworn, was examined and testified as follows:

THE COURT: Please state your full name and spell your last name.

THE WITNESS: Antonio Jaime Palacios, P-a-l-a-c-i-o-s.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. TREMAN:

* * *

[6] **Q.** Approximately how long were you on "I" Unit, in other words, residing on "I" Unit before that meeting took place?

[7] **A.** I'm not entirely sure. Might have been a day or so or a couple of days. Maybe five days. I'm not sure how many days I was there before I—he was there. I'm not

sure at all. He might have been there the same day. I'm not sure.

Q All right. Now, with reference to the day that you were locked down and went into segregation, into I Unit, beginning in the morning, what is the first activity that you can recall that you engaged in?

A Well, I got up kind of late that morning. I guess it was about 8:30. I'm not sure about the time, because at that institution they don't call out the time, and I was used to—see, every hour on the hour in McNeil Island they call out, "Lock up," you know, and you know what time it is, or, you know, they tell you, "The yard is open," or—see, and over here at Lompoc, they didn't do that. So I just got up in the morning. I didn't know exactly what time it was. I imagine it was about 8:30.

Q What did you do after you got out?

A I went out to the yard and ran the track for about forty-five minutes. I figured I ran about three or four miles.

* * *

[11] Q Now, did you have the occasion to see Mr. Gouveia on the day that you were locked down?

A I believe so, yes.

Q What is your best recollection as to where you saw him and what, if anything, he was doing?

A I seen him in the hallway as I was milling around after brunch. I believe I seen him out on the yard—I couldn't be positive, but I think I seen him on the yard while I was walking around. And I think I seen him in the gym after everyone had come in, because it was raining out.

MR. TREMAN: I have no further questions, your Honor.

[14] *CROSS EXAMINATION*

BY MR. DEIXLER:

Q Where did you see Mr. Trejo on November 11th?

A In the corridor.

Q And about what time of day was that, sir?

A I don't know. Sometime after I came in from the yard.

Q What time did you come in from the yard?

A I couldn't say what time that was. I don't know what time it was.

Q Was it about 8:00 o'clock in the morning?

A Oh, no, no. It was after brunch.

Q That would have been sometime, then, between the hours of 11:00 and 12:00?

A Possibly, yes.

Q You testified previously that you saw Mr. Gouveia near the gym; is that correct, sir?

[15] A Did I testify to that?

Q Well, let me ask you the question—

A Well, I seen him in the dining hall, the show area, where you go to the show, the hallway from the yard into the—it's all right there right next to each other. It's not a—it's not very far from each other. They're all right there, you know, the main—

Q You saw him in one of the corridors?

A In the main corridor. There's only one corridor, see.

Q I see. About what time did you see Mr. Gouveia?

A Right around the same time, yes.

Q About the same time you had seen Mr. Trejo?

A I seen Gouveia and also—in the corridor, yes.

Q Did you see him about the same time that you saw Mr. Trejo in the corridor?

A No, I don't think so.

Q About what time did you—

A I think I seen Gouveia after brunch. I seen the other—Tommy, I seen him when I came in from the yard, because I remember that distinctly, because he stopped me and he said that he was going to—he was supposed to get a visit, and something about that his next-door neighbor—his wife was going to fix me up with his next-door neighbor.

[16] Maybe I could get a visit or something. And that was the extent of the conversation.

Q What time did that—

A He was in—I don't know what he was doing. He was on his way to—I don't know what he was doing.

Q What time did that conversation take place with Mr. Trejo?

A I don't know.

Q Well, was it in the morning?

A It was in the afternoon, after brunch, after we came in from the yard.

Q After brunch, when you came in from the yard?

A Yeah.

Q Okay. What time, approximately, did you go to brunch?

A Like I say, I don't know what time brunch—at what time it was. I don't know the time. I just played it by ear. When my unit went to eat, I went to eat. I imagine it was around 10:30 or something like that.

Q And how much later after you saw Mr. Trejo did you then see Mr. Gouveia?

A I seen this Gouveia after I came out from brunch, and possibly I think I seen him on the yard also. I'm not really sure. It's been a long time, you know.

[17] Q So you're not really sure when you saw Mr. Gouveia; is that correct?

A I know I seen him in the—in the corridor. There's no doubt about that.

Q Does that corridor connect with the gym?

A Well, it—there's a corridor that—that's off—there's a hallway that's off the corridor that goes out to the yard, and off of that corridor is the gym.

Q Who was with Mr. Gouveia when you saw him in that corridor near the gym?

* * *

A He might have been with somebody, but I never—I didn't pay no attention to it.

Q You don't recall who he was with?

A No.

Q Did you know that Mr. Gouveia was a friend of Mr. Reynoso?

MR. TREMAN: Objection, your Honor

MR. ARAUJO: Assumes facts not in evidence.

MR. TREMAN: It's also beyond the scope.

[18] THE COURT: The objection is sustained.

BY MR. DEIXLER:

Q When you saw Mr. Gouveia in the gym corridor, did you have a conversation with him?

A Yeah. "Hey, what's happening, Willie? Where are you going?"

Q Do you remember those words distinctly?

A That's what I say to everybody.

Q Did Mr. Gouveia tell you where he was going?

A No. He just—I imagine he was just cruising around. I just went the other way.

Q When was the next time on that date that you saw Mr. Gouveia?

A I think I seen him on the yard—I'm not sure—walking around the track. There's quite a few peoples walking around the yard.

Q About what time did you see Mr. Gouveia?

A That was after—sometime after brunch.

Q Well, you saw him the gym corridor after brunch; is that correct?

A Well, you see, after brunch is—what I mean is, "after brunch" is in between the time after brunch to the time when it started raining outside.

* * *

[19] Q Who else was in the gym with Mr. Gouveia when you saw him there?

* * *

BY THE WITNESS:

A Well, I don't know exactly—

MR. TREMAN: Objection.

THE COURT: Overruled.

MR. LEVINE: Assumes a fact not in evidence.

THE COURT: Overruled.

You may answer.

BY THE WITNESS:

A Well, I don't know exactly who he was with. There was a lot of people in there, and a lot of people that I know were there and a lot of people that he knows were in there, I imagine. I don't know who exactly he was with, you know. I was just playing pool. I'm not asking him, "Hey, are you with him or are you with him?" You know, I wasn't into that. I just—

Q Would it be fair to say that when you saw Mr. Gouveia in the gym, he was with a group of inmates?

A Well, there was a pretty big group. There was a lot of people playing pool, people playing shuffleboard. Yeah, I imagine there was a lot of people in there, yeah.

* * *

[3] LOS ANGELES, CALIFORNIA, THURSDAY,
SEPTEMBER 25, 1980

* * *

RAYMOND OLVERA, called as a witness by defendant Gouveia, being first duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Raymond Olvera, O-l-v-e-r-a.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. TREMAN:

* * *

[11] Q Where was Mr. Gouveia relative to you?

A Several, two, three tables away, maybe.

Q Did you recognize any of the inmates with whom he was seated?

A I recognize all the inmates around there. I've been seeing them for so long. I don't recall exactly who was sitting with him, no.

Q But you have a distinct recollection of seeing Mr. Gouveia between the hours of 10:30 and 11:00 in the brunch hall; is that correct?

A Yes, I'm pretty sure.

Q When was the next time that you saw Mr. Gouveia on that date, sir?

A On my way to the visit.

Q And what time was that?

A About 12:00. 12:00, 12:30, something like that. In between that hour.

Q Well, let me ask you a question about visits, sir. In connection with a visit, do you have to sign in or sign out?

A You get a pass from the officer and you go direct to the visiting hall, and you get searched by an officer, and he lets you in, and you turn your pass over to an officer [12] in the room, and you can't leave again.

Q Is a record kept as to the time of visits and who visits on there?

A It must be, because they have your record and who comes to see you and all that.

Q And you're able to place the time that you saw Mr. Gouveia based upon the time that you had the visit; is that correct, sir?

A Just about.

Q So that if the visit was sometime after 12:00 o'clock, you would say that you saw Mr. Gouveia sometime after 12:00 o'clock; isn't that correct, sir?

A Well, it was about that time. No—it will vary, say, fifteen minutes or so.

Q Well, you don't have a specific recollection of the time, do you, sir?

A No.

MR. DEIXLER: Your Honor, may I approach the witness with a document which I'd like to be marked government's next? Before I do, I'd like to show it to defense counsel.

THE COURT: Very well.

(Brief pause.)

THE COURT: Do you wish the entire document marked or just a particular page?

[13] MR. DEIXLER: Just the particular page, please.

THE COURT: All right.

(Plaintiff's Exhibit 27 was marked for identification.)

MR. TREMAN: Your Honor, can we approach the side bar?

THE COURT: Yes.

(The following proceedings were had between the Court and counsel at side bar, outside the hearing of the jury:)

MR. TREMAN: Can I ask the purpose that this document is being shown to the witness?

THE COURT: Mr. Deixler.

MR. DEIXLER: Yes, your Honor. He testified he's able to place Mr. Gouveia where he placed him based upon the time of the visit, and he says he doesn't really have specific recollection regarding the time. The document indicates that he went out on his visit at 1:40 in the afternoon, not at 12:00 o'clock. I believe it would be five or six lines from the bottom, next to the word "Olvera."

MR. TREMAN: I don't know what that—

THE COURT: Well, have counsel seen this?

MR. DEIXLER: Yes. I have just shown it to him.

THE COURT: All right.

[14] MR. TREMAN: I don't know what the document reflects as far as who filled it out or when it was filled out, your Honor. I don't believe counsel intends to represent its in his handwriting and I don't believe that there's any foundation laid that, seeing this document or any other document, that he needs to see to have his recollection refreshed, number one, and whether or not it would be refreshed if he saw it.

THE COURT: Well, I don't think there's any requirement that there be a previous showing that his recollection would be refreshed. He can look at this and say, "No. It's wrong," or "No, it doesn't refresh my recollection," or "Yes, now that I think about it, it does refresh my recollection," and we'll have an answer. I think to be, of course, complete impeachment, there would have to be some custodian of the records brought in to demonstrate this. But it can be used to refresh his recollection. And it may or may not refresh his recollection.

MR. TREMAN: Okay. I would ask that the whole packet that this came out of be kept or marked by the Court, because I have previously talked to the officials at Lompoc and requested information about these visiting records, and was advised that they were destroyed. So at least I'll get the opportunity to look at the remaining material that's [15] in there.

THE COURT: All right. If it's agreeable with counsel, I'll return this document, from which only one page has been removed and marked as Government's—

What's the number?

THE CLERK: 27.

THE COURT: 27. Of course, you may examine it with Mr. Deixler.

Let's proceed.

MR. TREMAN: Thank you. (Whereupon, proceedings were resumed in open court, within the hearing of the jury.)

BY MR. DEIXLER:

Q Mr. Olvera, I'd like to direct your attention to Exhibit 27, the line five lines from the bottom, and ask you to read across and tell me whether this refreshes your recollection as to when you entered the visiting room on November 11, 1978.

THE COURT: Just read it to yourself, sir.

BY THE WITNESS:

A I don't believe it was that late.

Q It does not refresh your recollection; is that correct?

[16] A No.

Q Would you please describe where you saw Mr. Gouveia when you saw him in the afternoon of November 11, 1978.

A I believe he was going to the movie.

Q He was going to the movie?

A Yes.

Q And where were you when you observed him, please?

A I was going into the visiting room.

Q Did you stop and talk with Mr. Gouveia?

A I don't think so.

Q Did you say hello to him?

A I might have nodded.

Q Who was Mr. Gouveia walking with?

A I don't remember.

MR. TREMAN: Objection, your Honor. Assumes a fact not in evidence, that this witness ever—

THE COURT: Well, the answer may remain.

BY MR. DEIXLER:

Q But you do recall seeing Mr. Gouveia around 12:00 noon in the main corridor; is that correct?

A Yes.

Q When was the next time you saw Mr. Gouveia on that date?

A I believe at the movie that evening.

[3] LOS ANGELES, CALIFORNIA, THURSDAY,
SEPTEMBER 25, 1980

* * *

STEPHEN A. BROUGHTON, called as a witness by defendant Gouveia, being first fully sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Stephen Allen Broughton.

THE CLERK: Spell your last name, please.

THE WITNESS: B-r-o-u-g-h-t-o-n.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. TREMAN:

* * *

[13] BY THE WITNESS:

A I'll say 10:30, then. I don't know exactly.

Q Who did you have brunch with?

A Bobby Chase, Raymond Olvera. People that lived in the unit. I can't recall exactly who I sat at the table with.

Q Did you see Mr. Gouveia at brunch?

A Yes, I did.

Q Did Mr. Gouveia live in your unit?

A No, he didn't.

Q What unit did you live in?

A C Unit.

Q What unit did Mr. Gouveia live in?

A K Unit.

Q Where was Mr. Gouveia sitting relative to where you were sitting at brunch?

A I don't know. It couldn't have been two or three tables away, where everybody sits in a certain area. They only got so many tables.

Q Well, which was it, two or three tables away?

A Three tables.

Q Who was sitting at Mr. Gouveia's table?

A I can't recall.

Q Who was sitting at the table next to you, between [14] Mr. Gouveia and yourself?

A I don't know.

Q Who was sitting at the table after that?

A I don't know.

Q What was the time of day when you first saw Mr. Gouveia having brunch?

A 10:30. Between 10:30 and 11:00.

Q So Mr. Gouveia arrived after you were there; is that correct, sir?

A I don't know if he arrived first or not. I'm telling you, they called one unit and then they called another. Everybody just goes at one time, you know. They have a line, you go through it, and then everybody sits down.

Q Did you see Mr. Gouveia when you were in line?

A I can't recall if I seen him in line or not. I seen him sitting down at the chow hall.

Q What time did you first see him sitting down at the chow hall?

A 10:30.

Q You're certain of that?

A No, I'm not certain of that. I'm telling you, between 10:00 and 11:00. I can't say exactly what time.

* * *

[16] Q When, then, did you see Mr. Gouveia in the hallway near M Unit relative to when you had brunch?

A It was right when we came out of brunch. I'm not exact—I don't know exactly where I did see him in the hallway. The hallway is very long.

Q Who was Mr. Gouveia standing with when you saw him in the hallway?

A I don't know.

Q Was he standing by himself?

A I can't recall.

Q When did you see Mr. Gouveia next on November 11th?

A In the gymnasium

Q What part of the gym?

A Upstairs, where the pool hall, shuffleboard, pingpong room is.

Q About what time was that?

A I'd say 12:30.

Q What is the basis for your putting the time at 12:30, sir?

A Just that's what time I thought I went up there.

Q Well, did you look at a clock in the gym before you went up there?

A No, I didn't.

* * *

[20] A I can't say exactly what time.

Q But it was about the same time you saw Mr. Ramirez, Mr. Reynoso and Mr. Gouveia; isn't that correct?

A Right.

Q And you saw all those people upstairs near the pool hall; isn't that correct?

A Yes.

Q Did you see Mr. Kinard up there at that time also?

A I can't remember if I seen him or not.

Q On November 11, 1978, when was the first time you saw Champ Reynoso?

A At brunch.

Q What time was that?

MR. ARAUJO: I'm going to object, your Honor. It's been asked and answered several times.

THE COURT: Overruled.

You may answer.

BY THE WITNESS:

A Between 10:00 and 11:00.

You keep asking me certain times, and how can I remember certain times over two years ago?

Q I can't imagine.

A I can't either.

* * *

[21] BY MR. DEIXLER:

Q Who was Mr. Reynoso having brunch with when you saw him?

A I can't say for sure.

Q Where was Mr. Reynoso compared to you when you were having brunch?

A Close by. Like I said, there's only so many tables in the chow hall, and everybody sits there all close by.

Q Was he sitting with Mr. Gouveia?

A Probably.

Q Was he having brunch with Mr. Flores?

A Yeah, I imagine so. They're in the same unit. They let us out unit by unit.

Q Is the Mr. Flores that you recall having brunch with Mr. Reynoso in the courtroom today?

A Yes, he is.

* * *

[31] Q Mr. Broughton, did you know on November the 11th, 1978, that you would be called as a witness in any case involving your activities of November 11, 1978?

A No, I didn't, not till right now.

Q Did you make a list of the individuals that you saw on November the 11th, 1978?

A No.

Q Did you have any reason to believe or to suspect that your account of those activities might be questioned two years down the road?

A No, I didn't.

MR. ARAUJO: I have no further questions.

THE COURT: Thank you.

Mr. Walsh.

* * *

LOS ANGELES, CALIFORNIA, FRIDAY, SEPTEMBER 26,
1980

* * *

PAUL LEROY ALLEN, called as a witness by the defendant Gouveia, being first duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Paul Leroy Allen, A-l-l-e-n.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. TREMAN:

* * *

[6] Q Do you recall what day of the week this was?

A As I recall, it was—it was a weekend, either Saturday or Sunday, and I—I feel almost sure it was Saturday.

Q Okay. Now, you indicated that you were in the hospital at this period of time on this day. Now, how did you come to see Mr. Gouveia in K Unit?

A I asked to—well, I got a pass from the hospital to go to my unit to make a telephone call.

Q Where within K Unit did you see Mr. Gouveia?

A In the area of the phone booth, which would be on the flats, near the front of the building.

Q Did you have any contact with Mr. Gouveia when you saw him in the location you've indicated on this day?

A Yes, I did.

Q And what was the nature of the contact that you had with him?

A It was—I was in the hospital, and I had been in a period of a couple of months of declining health and had been in the hospital once previous to this, and he was inquiring about my health, as to whether or not I was getting any better and so forth.

Q For approximately how long did you have contact [7] with him in the unit on this particular day?

A I would say fifteen, twenty minutes, possibly a half hour.

Q Can you give me a time or a time frame within which this contact occurred that you've testified to?

A Not—not precisely, but it would be somewhere between the hours of 11:00 and 1:00 o'clock.

Q How is it that you arrive at that time frame for the contact that you've testified to?

A Well, the breakfast meal, the weekend breakfast meal, is what they call brunch there, and it's not served in the hospital until approximately 10:30, and one of the—one of the reasons that I had to wait to get out of the hospital to make the call was, I had to wait until after the brunch to go to the unit to make the call.

Q And how is it that you fix an ending time for the time frame that you've given us?

A Well, because I was in the unit quite a while, in that there's a very lengthy phone line in there on the weekend.

Q Thank you.

MR. TREMAN: I have nothing further at this time.

THE COURT: Thank you.

Mr. Deixler.

[8] **CROSS-EXAMINATION**

BY MR. DEIXLER:

Q Mr. Allen, in this conversation you recall having with Mr. Gouveia, where was Mr. Gouveia standing when you had the conversation with him?

A In the area of the phone booth, the pool table.

Q Was he on line with you?

A Quite possibly. I'm not—I'm not certain of that.

Q Who else was with Mr. Gouveia at the time this conversation took place?

A Oh, there was several people around there. Most of them were inquiring—making the same inquiries he was, as to how I was feeling and so forth.

Q Who else made those inquiries?

A Oh, Danny Padilla, Pete Vanblairkam (?), and probably many more.

Q But none that you can recall now; is that correct?

A There's another fellow with—named Kenny with a difficult last name to remember.

Q Did all of these individuals stay with you and Mr. Gouveia for the entire conversation?

A No.

Q Who left first from that conversation, then?

A That I—I can't recall that.

[9] Q Approximately how long did that conversation take place?

A Possibly fifteen minutes, a half hour.

Q Would you describe what was said in that conversation, please.

A Well, basically, just "How are you doing?" and "You getting any better?" And I'm telling him that I'm getting some rest and medication and so forth, and that I was feeling somewhat better. And just general institutional gossip more or less.

Q Well, what do you recall being discussed?

A Football, for one thing.

Q Oklahoma-Nebraska football game?

A Well, I'm not that big of a football fan, so I don't specifically recall that.

Q Well, what do you specifically recall being discussed?

A Just the general thing on football, sports, and—small talk, you know, is all I can describe it as.

Q Would you regard this fifteen-to thirty-minute conversation as a lengthy conversation with Mr. Gouveia?

A Under the circumstances, no.

* * *

[4] **LOS ANGELES, CALIFORNIA, FRIDAY,**
SEPTEMBER 26, 1980

* * *

WILLIAM A. GOUVEIA, one of the defendants herein, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: William A. Gouveia, G-o-u-v-e-i-a.

* * *

DIRECT EXAMINATION

BY MR. TREMAN:

[22] Q Who did you talk to?

[23] A I can't remember all that.

Q Did you see Mr. Reynoso in the yard?

A I don't know.

Q Did you see Mr. Kinard in the yard?

A No. I seen him in the morning.

Q What time did you see Mr. Kinard in the morning?

A It was before brunchtime, when I went out to work out at the weight pile.

Q And he was with you?

A No.

Q Where was he?

A He was off to the side right there, watching people working out.

Q When you went to the yard after brunch, who else did you see?

A After brunch?

Q Yes.

A After brunch?

Q Yes.

A Man, there's all kind of people out there. I can't recall. You know, there's—you're talking about hundreds of people walking around in a yard.

* * *

[25]

Q About what time do you remember seeing Mr. Reynoso [26] up there?

A I don't know. It's in the afternoon, after I left the movie.

Q About 2:00 o'clock, sir?

A What?

Q Was it about 2:00 o'clock?

A Could have been around that time.

Q Do you know an inmate named Willard Taylor?

A Yes.

Q Do you recall seeing Willard Taylor on November 11, 1978?

A Oh, yes. He lives in my unit.

Q Do you recall seeing Willard Taylor between the hours of 12:30 and 1:00 o'clock?

A No.

Q When in the afternoon can you recall seeing Willard Taylor, if at all?

A In the afternoon?

Q Yes.

A Probably—I probably had seen him—I don't know. In the afternoon, when I come back from the gym. He's in the unit. Or evening sometime there, you know before chow.

Q After brunch, when was the next time you saw Steven Kinard on November 11, 1978?

[27] A After brunch? I don't know. He might have been walking around somewhere. I might have passed him out in the yard somewhere or something, or hallway, or I don't know.

Q What time do you recall passing him in the yard, sir?

A I say, I don't recall if I passed him in the yard or the hallway.

Q Well, you recall seeing him in the gym, do you not, sir, in the afternoon?

A In the gym in the afternoon? No, I didn't see him in the gym. I seen him in the weight pile in the morning.

Q Do you recall seeing Mr. Segura in the gym in the afternoon?

A No, not really. I don't recall that.

Q Do you recall seeing Mr. Broughton?

A Yeah, Sam.

Q Who was he with?

A I don't know who he was with. He was playing shuffleboard.

Q Do you recall seeing Mr. Palacios?

A Yeah, I seen Tony around. I don't know when it was in the gym there, though. I remember seeing him over in the gym, you know.

Q When was the first time on November 11th that [28] you can recall seeing Robert Ramirez?

A I guess I'd say the first time I seen him probably was at brunch. Seen everybody at brunch. Or he might have been outside in the yard, walking around or something.

Q Who do you recall seeing him with?

MR. TREMAN: Objection, your Honor. That assumes a fact not in evidence.

THE WITNESS: I barely recall seeing him.

THE COURT: Overruled.
BY MR. DEIXLER:

Q I am sorry, sir. I didn't hear your answer. Would you repeat it, please.

A I barely recall seeing him or anything, you know. I don't recall who he was walking with or anything. I'm speculating, you know, that he's walking past me or something; you know what I mean?

Q What were you doing between the hours of 12:00 and 1:00 on November 11, 1978?

A Well, for a while I was in the gym, if you figure like that. I probably was in the unit too. I was in the unit.

Q Okay. What time between the hours of 12:00 and 1:00 were you in the unit?

A That would be hard to say [29] Q Well, closer to 12:00 or closer to 1:00?

Q Who were you in the unit with?

A I wasn't with nobody really.

Q Well, you recall seeing Steven Kinard in the unit about that time, don't you?

A No.

Q Do you recall seeing Willard Taylor about that time?

A No.

Q Who do you recall seeing between the hours of 12:00 and 1:00?

A Well, when I was there, I was over by the TV. You know, Danny and them, Little Tony. And then when—yeah. I remember what's his name, old man Paul, when he came in to make his phone call. I didn't even remember that till he came up here. That slipped my mind completely. He just come back from the hospital and make a phone call.

Q What time do you recall seeing him?

A Before the movie time.

Q Five minutes before the movie?

A I can't—I can't recall that.

Q Where did you see him?

A In the unit, right there on the flats.

Q About 1:00 o'clock; would that be a fair [30] statement, sir?

A No statement would be a fair statement right there.

Q Well, about how long after you saw Mr.____ is it hall, H-a-l-l?

A Paul Allen.

Q Oh. Mr. Allen. How long after you saw Mr. Allen did you go to the movie?

A I don't know. Can't say.

Q How long after you saw Mr. Allen did you go to the gym?

A Did I go to the gym? Man, I went—I went to the gym after the movie.

Q How long after the movie did you go to the gym?

A I was only in there a little while.

Q How long were you in the movie?

A Can't say for sure.

Q Do you recall seeing Pedro Flores on November 11, 1978?

A Well, to be sure, no.

Q Do you recall having brunch with him?

A No.

Q Do you recall having dinner with him?

A No.

Q Do you recall having dinner?

[31] A Yeah. I eat every meal.

Q What time did you go to dinner on November 11, 1978?

A I don't know. They run it, I don't know—ran about—I don't know. Might have been between 5:00 and 6:00, somewhere in there.

Q Do you recall with whom you ate dinner?

A No.

Q Why don't you look at page 2 on the FBI 302, the first paragraph. Read it to yourself and tell me whether that refreshes your recollections as to who you had dinner with on November 11th.

A Okay.

Q Does that refresh your recollection?

A Yeah, it refreshes it to a certain extent.

Q Do you now recall that you had dinner with Steven Kinard?

A He goes to chow with me from my unit.

THE COURT: Well, listen carefully to the question, sir, and please answer the question.

BY MR. DEIXLER:

Q Do you now recall that you had dinner with Steven Kinard?

A Yeah. He went to the chow hall with me.

Q Do you now recall that you had dinner with Pedro [32] Flores?

A I don't know. See, he was working. I don't know if he was working or not, if he was in there.

Q Do you now recall that you had dinner with Champ Reynoso?

A He could have been there.

Q Do you now recall that you had dinner with Philip Segura?

A He could have been there too.

Q But you have no recollection at all; is that correct, sir?

A I can't—you know, to be truthful, I can't say anybody—

Q In fact, you have no explanation for what you are doing on November 11, 1978, do you, sir?

MR. TREMAN: Objection, your Honor. Argumentative.

THE WITNESS: Yes, I do.

THE COURT: Just a moment.

MR. DEIXLER: I have no further questions of the witness.

THE COURT: Anything further?

MR. TREMAN: I ask that the—

Nothing further, your Honor.

THE COURT: Thank you. You may step down.

You may call your next witness, gentlemen.

* * *

[3] LOS ANGELES, CALIFORNIA, TUESDAY,
 SEPTEMBER 30, 1980

* * *

Tony Estrada, called as a witness by defendant Gouveia, being first duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Tony Estrada. Last name's spelled E-s-t-r-a-d-a.

THE CLERK: Thank you.

DIRECT EXAMINATION
BY MR. TREMAN:

* * *

[21] THE COURT: Mr. Gouveia.

MR. TREMAN: That's Willie.

THE COURT: I think your question—

THE WITNESS: Yeah, I know it. But I don't remember. You're talking about a long time ago.

THE COURT: All right.

BY MR. TREMAN:

Q Did it ever come to your attention that Willie had been placed in administrative segregation?

A Not that I can—I'm not sure. I can't really recall that.

Q Did it ever come to your attention in November of 1978 that an inmate had been found dead within M Unit within the Lompoc correctional facility?

A Yes.

Q All right. Now, can you tell me, with relationship to when that information came to your attention, when the conversation with Flappers took place?

THE COURT: Perhaps we can establish first, Mr. Treman, when the information came to his attention.

MR. TREMAN: All right.

Q Can you tell me when the information concerning the inmate being found dead in the institution in M Unit came to your attention?

[22] A In the afternoon sometime, around count. Some-time around count time, I guess.

Q All right. Now, with regard to when that information concerning the inmate in M Unit that came to your attention in the afternoon, when was that in relationship to the conversation with Flappers?

THE COURT: Again, perhaps before we get to the con-versation with Flappers, can we determine what day the in-formation was regarding the death?

MR. TREMAN: Okay.

Q Can you tell me, if you know, the day of the week that the information concerning the death—

A I'm not sure what day it was.

Q Do you recall if it was a weekday or a weekend?

A I'm not even sure.

Q Did you see Mr. Gouveia in the unit, K Unit, the day after the information came to your attention concerning the inmate being found dead in M Unit?

A Yeah, he—he had been—he had been in the unit all that afternoon.

* * *

[30] THE COURT: Well, the prison telegraph seems to sputter under this witness. He doesn't know the nickname of the decedent, he doesn't know the decedent's name, he doesn't know that he went into segregation. I think that you're certainly entitled to develop it, but I think that Mr. Deixler has put his finger on it: that we don't know when he received the information. If you can establish that the in-formation he received was on the day of the murder, then I think you've laid your foundation, but at the present time, I don't believe you've laid that foundation. You're not pre-cluded from attempting further, despite this witness's ob-vious lack of recollection of many of the events that occurred. You're not precluded from attempting further, but I still think there's a hiatus between when he learned and [31] was that indeed the day or the day after or two days after, that type of thing.

MR. ARAUJO: Your Honor, for the record, I would like to point out that I believe that's a question of fact for the jury to decide. I certainly think there's enough evidence. The Court has allowed in a shoe print in this case where there was no direct evidence that it was in fact made by that particular shoe. I think, in all fairness, that the jury should be allowed to hear this evidence and decide whether or not it took place that day or took place some other day. I certainly think there is a sufficient amount of evidence at this point where a jury can draw the conclusion that this event took place the same day or at some other subsequent day. As far as I know, there was no two or three murders in Lompoc during the month of November, there's only been one murder, and—

THE COURT: Well, there's no question that there was only one murder during the month of November, but there is a question, at least in the Court's mind, as to when this witness learned about it.

MR. ARAUJO: I understand that.

THE COURT: Counsel assured me that the possession of knives is rampant throughout the population of Lompoc, and I think it's therefore incumbent upon counsel to establish [32] that what he saw was concurrent with the episodes that we're involved in and not some other episodes.

MR. ARAUJO: I understand that. But your Honor has precluded us from bringing up the fact that knives are rampant in Lompoc at every turn, at every juncture. There's no evidence before the jury that there are any knives at Lompoc other than these three knives. And I certainly think that Mr. Treman has laid a sufficient foundation where the jury should hear the evidence. This is an event that took place two years ago. We've argued our pretrial motions for delay and the problems that would be created by lapse of memory. I think these are problems that were created by the government, and I don't think that the defense should be held responsible for the lack of memory as to the particular date, whether it was November 11th or November 15th or November the 14th or whenever. I think that, in all fairness, there should be some leeway on the part of the Court. This is an event that took place two

ago. We've made our motions on pretrial of preindictment delay. Those motions have been denied. Now, I would assume that, in all fairness, we have laid a sufficient foundation for the jury to at least consider the evidence.

THE COURT: Well, the Court has to rule as it [33] sees fit, using its discretion. This witness's memory is at best a faded pastel of what was once a brilliant picture. Whether it ever encompassed the name of the decedent, his nickname, the fact that anybody had been put in segregation, is of extreme doubt to the Court. And I think because of the fact his recollection is so deficient in so many areas, that there must be a specific demonstration of when this event occurred. Now, that's the foundation that's necessary. If that's made, then these matters are admissible. That will be the ruling of the Court.

(Whereupon, proceedings were resumed in open court, within the hearing of the jury.)

BY MR. TREMAN:

Q Mr. Estrada, what is it that causes you to remember this conversation with Flappers?

A Because I was upset at him.

Q Why were you upset at him.

A Well, because he made some little—you know, we were upset about some smoke, and he was—I was upset because I didn't get any of it.

* * *

[44]

Q And how many quarter-inch pieces of metal did you see sticking out, sir?

A Hey, when I seen that, I didn't—you know, I didn't pay no—I just—I really didn't pay that much attention to it till he ran the trip to me.

Q And what else did you see on that quarter-inch of metal?

A That was it.

Q Was it shiny?

A Not—no, not that I can recall.

Q Was it bloody?

A No, not that I can recall.

Q Was it dirty?

A Not that I can recall.

Q What time did you see this quarter-inch piece of metal?

A Could have been anywhere between 1:00, 2:00. I don't know. Somewhere in there. 1:30, 12:00. Like I explained to him.

Q You're not really sure when you saw it?

A Could have been anywhere like 1:00, 12:30, or 1:00 o'clock.

Q Or 2:00 o'clock?

[45] A Or 2:00 o'clock or any time like that. 1:00 o'clock.

Q Fine.

MR. DEIXLER: I have no further questions, your Honor.

THE COURT: Anything further, gentlemen?

Thank you, sir—

MR. ARAUJO: I just have—

THE COURT: I'm sorry. Go ahead.

CROSS-EXAMINATION

BY MR., ARAUJO:

Q Mr. Estrada, could you have seen that package as early as 12:00 o'clock?

MR. DEIXLER: Objection. Leading.

THE COURT: Sustained.

BY THE WITNESS:

A Earlier.

THE COURT: Just a moment.

BY MR. ARAUJO:

Q You've indicated the times of 12:30, 1:00 o'clock, 2:00 o'clock. You're not certain. How much earlier than 12:30 could you have seen those knives?

A Could have been earlier.

Q How much earlier?

[46] A Well, could have been 12:15 maybe, 12:25, somewhere in there. Could have been anywhere in there.

Q Could it have been any earlier than 12:15?

A Earlier?

Q Yes.

A I don't—I'm not sure.

Q Okay.

A Could have.

Q Excuse me?

A It could have.

MR. ARAUJO: I have no further questions.

THE COURT: Anything further, gentlemen?

Anything further, Mr. Deixler?

MR. DEIXLER: Nothing further, your Honor.

THE COURT: Thank you. You may step down.

**Chronological List of Relevant Docket Entries—
Mills, Pierce**

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**
**United States v. Robert Eugene Mills and
Richard Raymond Pierce, CR-80-278-01-WPG,
CR-80-278-02-WPG**

Date	Proceeding
3.27.80	Indictment filed
4.21.80	Arraignment; attorneys appointed for defendants; trial date set for 6.30.80
5.27.80	Order concerning disclosure of witness statements
5.29.80	Order concerning disclosure of grand jury state- ments and identity of witnesses
6.30.80	Order appointing expert witness Dykstra; trial date continued to 7.22.80
7.10.80	Order staying government production of state- ments of inmate witnesses until 7.14.80
7.17.80	Order concerning discovery; trial date continued to 7.29.80
7.21.80	Hearing; motion to dismiss indictment granted
8.14.80	Order dismissing indictment filed
8.19.80	Government notice of appeal filed
8.21.80 through	
3.16.81	Orders concerning transportation of witnesses
2.24.81	Order granting application of defendant Mills for appointment of investigative agency
4.6.81	Court of appeals opinion reversing dismissal of in- dictment
7.7.81	Court of appeals opinion amended
8.10.81	Status hearing; trial date set for 10.13.81
10.13.81	Petition for certiorari denied
10.114.81	Writs issued for inmate witnesses
10.22.81	Order granting defendants' application for appoint- ment of witness Bucklin
10.23.81	Trial date continued to 1.5.82
11.13.81	Order granting defendants' application for appoint- ment of expert Fox
11.13.81 through 12.9.81	Orders concerning inmate witnesses, transporta- tion of witnesses, interviews of witnesses by de- fense attorneys
1.5.82	Trial begins

- 1.13.82 Motion for judgment of acquittal denied
1.27.82 Jury begins deliberations
1.28.82 Jury returns verdict of guilty as to both defendants
3.22.82 Motion for judgment of acquittal denied; defendants sentenced
3.24.82 Notices of appeal filed by defendants

UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

Mills, Robert Eugene No. 82-1493

Pierce, Richard Raymond No. 82-1494
Proceedings

- Date Proceedings
- 11.15.82 Case consolidated with *Gouveia et al.*
12.15.82 Oral argument
4.26.83 En banc court of appeals reverses judgment of district court and remands with instructions to dismiss the indictments
5.16.83 Court of appeals issues stay of mandate
10.17.83 Order of Supreme Court granting petition for a writ of certiorari

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

September 1979 Grand Jury

CR 80-278

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ROBERT EUGENE MILLS, RICHARD RAYMOND PIERCE,
DEFENDANTS

INDICTMENT

[18 U.S.C. § 1111: Murder, 18 U.S.C. §113(c): Assault With
Dangerous Weapon; 18 U.S.C. § 1792: Conveyance]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 1111]

On or about August 22, 1979, at the Federal Correctional Institution at Lompoc, California, within the Central District of California, within the special maritime and territorial jurisdiction of the United States, defendants ROBERT EUGENE MILLS and RICHARD RAYMOND PIERCE, with premeditation and malice aforethought, did willfully, deliberately and maliciously murder Thomas Hall by means of a knife.

COUNT TWO

[18 U.S.C. § 113(c)]

On or about August 22, 1979, in Santa Barbara County, at the Federal Correctional Institution at Lompoc, California, within the Central District of California, within the special maritime and territorial jurisdiction of the United States, defendant RICHARD RAYMOND PIERCE, with intent to do bodily harm and without just cause or excuse, did assault Gary Howard Mellen with a knife, a dangerous weapon.

COUNT THREE
[18 U.S.C. §1792]

On or about August 22, 1979, at the Federal Correctional Institution at Lompoc, California, within the Central District of California, defendants ROBERT EUGENE MILLS and RICHARD RAYMOND PIERCE conveyed from place to place within the Federal Correctional Institution a knife designed to kill, injure and disable an officer, agent, employee or inmate thereof.

A TRUE BILL

/s/ _____
Foreperson

/s/ _____

ANDREA SHERIDAN ORDIN
United States Attorney

DECLARATION OF EDWIN S. SAUL IN SUPPORT OF
MOTION TO DISMISS ON GROUNDS OF
PRE-INDICTMENT DELAY

I, EDWIN S. SAUL, declare:

(1) I am an attorney licensed to practice law by the State of California and admitted to practice before the within Honorable Court. My office is located on the 9th Floor of the Crocker Bank Building, 15760 Ventura Boulevard, Encino, California. If called to the stand as a witness I could testify to the following facts from my own personal knowledge, except as otherwise indicated to the contrary.

(2) The facts in this case indicate that a murder and an assault were committed in the Federal Correctional Institution at Lompoc, California, on August 22, 1979, at approximately 5:05 P.M. The Indictment was not filed until March 27, 1980, and alleges in addition to the murder and assault, another count dealing with the alleged transportation within a correctional institution of a weapon. 18 *United States Code* § 1792.

(3) The Government started its investigation almost immediately after the occurrence; and, in fact, both of the Defendants were "arrested" and questioned on that very same evening. It also appears that both of these Defendants were placed in Unit I, the isolation unit, during the evening hours of August 22, 1980. They remained in isolation (or "in the hole") for a period of approximately eighteen months. Mr. Richard Raymond Pierce by virtue of this Motion does hereby allege that delay caused to violate his right to a speedy trial, as that right is guaranteed by the Sixth Amendment of the United States Constitution; and, also, violated his right to the assistance of counsel. The information furnished to the Defendants by the Government through the discovery process clearly shows that Mr. Pierce did on August 22, 1979, almost immediately after he was questioned, request the assistance of an attorney.

(4) Had an attorney been appointed for Mr. Pierce on or about August 22, 1980, that attorney would have been able to do many things to help prepare a defense for Mr. Pierce in this case. Perhaps first among the things that the attorney would have wanted to do would have been to take steps

to preserve certain types of evidence, possibly including a request for a second autopsy, or for certain things to be looked for in the autopsy that was in fact performed. There were many items of physical evidence available on the evening of August 22, 1979, including clothing, blood smears on the floor, footprints, a weapon, stocking caps, the dead body of the alleged victim Hall, and the live body of the alleged body Mellon.

(5) Of course, which an attorney would have sought about doing immediately would have been the interviewing of potential witnesses. I was personally appointed to represent Mr. Pierce in this case on or about May 22, 1980, and did in fact start out to find potential witnesses on Mr. Pierce's behalf almost immediately. I was first hindered by virtue of the fact that Mr. Pierce himself had forgotten a good deal between August of 1979 and May of 1980. Although he did make some notes regarding his whereabouts at the time of the murder, those notes were placed in his property which I have not yet been able to obtain even though I believe I have made diligent efforts to do so. Mr. Pierce did not, however, have any knowledge of the possibility that his activities on the day of August 21, 1979, would have been relevant and made no effort whatsoever to even try to recall his whereabouts on that day or the people whom he might have seen.

(6) Although, as indicated above, I believe I have made extensive effort to find witnesses and have in fact found some, I sincerely believe that there were other witnesses who could have been called to the stand to testify on Mr. Pierce's behalf who we will now never find. In addition, some of the names which Mr. Pierce has given to me have not as yet been located. Since I have not yet completed my efforts in trying to locate these witnesses, and have an appointment to visit the correctional institution at Lompoc, California, on July 1, 1980, I am not going to specify the names of the witnesses who I am still looking for in particularity in this Declaration. If this Motion is not heard on June 30, 1980, I will file a Supplemental Declaration, but if this Motion is heard on that date I will try to recount to the Court as best as I can, from my notes, the status of my ef-

forts to locate various people. It cannot be overemphasized, however, that the interviews that I have conducted have shown to me beyond any question that there would have been other people who would have come forward, or who Mr. Pierce would have recalled, who will now never be known. Even if there is cause for the delay in the Indictment, which the Government has yet to state, there can be no cause for not having appointed an attorney for Mr. Pierce at the time he requested one so that efforts could have been made to preserve evidence, ascertain the names of witnesses, and make sure that those things that would be of importance to Mr. Pierce's defense were preserved.

(7) One item of physical evidence which the Government to believe indicates Mr. Pierce's guilt is a finger impression mark on his arm. Although a clumsy Polaroid photograph of this impression was taken that night, the officials of the prison who were involved in the taking of the photograph were not in any way looking to analyse this evidence in a manner that would be consistent with Mr. Pierce's defense, and made no efforts to preserve or analyse the mark other than the taking of the picture provided to Mr. Pierce sometime in the month of June, 1980, after a Court order was necessary to obtain proper discovery.

(8) A matter has recently come to my attention which I believe would be included within the work product privilege which I do not choose to waive at this time. I can state without equivocation, however, that based upon this information it would have been important to answer certain questions when the autopsy of Mr. Hall was conducted, and to have available certain information regarding the wounds to Mr. Mellon which have now healed. Because of the delay in the Indictment, and because of the failure on the part of the Government to appoint an attorney for Mr. Pierce, these efforts would now either be extremely difficult (and possibly involving the exumation of the body of Hall) or, in some instances, totally impossible.

(9) The Government has had almost a year to make this case and Mr. Pierce has, in effect, had since May 22, 1980, to prepare a defense. Even taking the date of the Indictment, March 27, 1980, Mr. Pierce has had only a little bet-

ter than three months to try to prepare a defense (compared to the time which the Government has had which has been since they began their investigation at approximately 10 minutes after 5 on August 22, 1979). There is an obvious prejudice to Mr. Pierce because of the delay, and the prejudice has been compounded by virtue of the Government's failure to provide him with an attorney.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 1980, at Los Angeles County, California.

/s/

EDWIN S. SAUL

DECLARATION OF ROBERT E. MILLS

I, ROBERT E. MILLS, declare and state:

1. I am one of the defendants in this case, and have been an inmate in Federal Prison for approximately 4 years. If called to the stand as a witness I could testify to the facts set forth herein from my personal knowledge.

2. On the evening of August 22, 1979, I was questioned about the murder of Thomas Hall by, among others, F.B.I. Special Agent Thomas Mansfield. Although I consistently stated that I knew nothing of the Hall murder, and that I wanted an attorney present before I answered any questions, I was asked a number of questions about Thomas Hall's death. At some point during the interview, I was asked to sign a waiver of rights form. I refused to sign this form, and again asked that I be provided with an attorney. My request was ignored, and I was told to remove my shirt and pants, and was thereafter examined first by the agents who were questioning me, and, subsequently, by a doctor from the prison. At one point during the physical examination, to which I also objected and with respect to which I also asked to have an attorney present, the agents gripped my left forearm and caused two cuts to open and begin to bleed. At the conclusion of this examination, the clothes I was wearing, as well as my shoes, were confiscated, I was given khaki dress to wear, and sent to the strip cells, which are located in the basement area of the I. Unit, which is the segregation unit or Administrative Detention Unit ("ADU") at F.C.I., Lompoc. The strip cells have only a sleeping cot on the concrete floor. There is a hole in the floor to be used as a toilet, but it can be flushed only by the guards outside the cell. My transfer to ADU took place some time between 7:00 p.m. and 8:00 p.m. on the evening of August 22, 1979.

3. The next morning, I was taken from the strip cell and placed in one of the cells in the upper ranges of ADU. Although I was not questioned again immediately, I recall that about the third day of my detention in ADU, some of the guards started telling me that I was going to be sent to the Marion Control Unit in Illinois. Every inmate knows

that the Marion Control Unit is the maximum security facility in the Federal Prison System, and that you are sent there only if the prison authorities believe that you are very dangerous or have committed a serious crime for which you will be tried. However, I was not asked any further questions about Hall's death until approximately two weeks later when I was taken to a small room at the end of the corridor of the ADU where a hearing was held by the Unit Disciplinary Committee. This committee consisted of one of the counsellors from my previous residential unit in the prison (J-Unit), and my case manager. During that hearing I was told that based on confidential sources they believed I was guilty of the murder of Thomas Hall. I told them again that I had nothing to do with Thomas Hall's murder, and that I wanted to see an attorney. The copy of the incident report which was completed by the prison officials at the conclusion of my UDC hearing, a copy of which I was provided by prison officials, confirms this. *See Exhibit A hereto.* At the conclusion of my hearing, I was told that I was probably guilty of the murder of Thomas Hall, that I was going to lose all of my good time, and that I was going to be sent to the Marion Control Unit.

4. Approximately one week after the UDC hearing, I was taken back to the same room for a hearing before the Institutional Disciplinary Committee ("IDC"). At this meeting, there were present some senior officials from the prison administration, including a captain and a couple of lieutenants. Again, I asked to have an attorney present and told them that I did not want to answer any questions without the advice of counsel. One of the prison officials at that hearing (I believe it was the captain present) told me that I didn't have a right to an attorney because this was an institutional case, and that for my own good, if I had an alibi, I should tell them who my witnesses were so the IDC could interview them. The captain also asked me if I didn't want to "talk to him in private" about the Hall incident. I was also told that if I wanted, a staff member from the prison would interview the witnesses whose names I gave to the committee instead of a member of the IDC going directly to these inmates. Again, I told the IDC that I had nothing to

do with the Hall murder, and that I didn't want to say anything more until I had an opportunity to talk to an attorney. Also, I wouldn't give them names of witnesses because anyone who has been in prison even a short time knows that it is impossible to give the names of other inmates to federal officials for questioning. The inmates with whom you must live on a daily basis respond very badly to having their name given out in that manner. I asked to have an attorney or some other neutral person (not from the prison) appointed so that that person could talk to my witnesses first. That request was refused by the IDC. At the conclusion of the IDC hearing, I was told that I was guilty of the murder of Thomas Hall, that I was going to lose all of my good time, and that I was going to the Marion Control Unit.

5. Some time after my IDC hearing, I was taken to be interviewed by a man the inmates know as "Stretch". I understand Stretch is a Federal Bureau of Prisons official who goes from prison to prison talking to inmates accused of serious crimes to see if they should be committed to the Marion Control Unit. When I was taken to Stretch, I asked again to see an attorney. Stretch told me I wasn't entitled to one, that he had been told that I was guilty of the murder of Thomas Hall, and that a determination was being made whether to send me to the Marion Control Unit. Obviously, I had been deeply worried from the time I was first interviewed about Hall's death, because it is clear that if the prison authorities believe you have murdered another inmate, the matter won't stop as just an "administrative case." During the time I have been in prison, I have never heard of anyone who is accused of murder who was not made to stand trial in a federal court. Thus, although I was not surprised, I became even more concerned about what would happen to me, when Stretch informed me that from what he had heard the federal authorities were probably going to seek an indictment against me for the murder of Thomas Hall. When I heard that, I again told Stretch that I had to have an attorney. Again, Stretch said that I did not have a right to one.

6. After my meeting with Stretch, I was placed back in ADU, where I remained until I was transported to the Los Angeles County Jail for my post indictment hearing on or about April 21, 1980. At that time, I was finally appointed an attorney.

7. In all, I was held in solitary confinement in ADU for approximately 8 months, from the evening of August 22, 1979, until my release to the Los Angeles County Jail on or about April 21, 1980, subsequent to my indictment. During that time, I was not permitted to have any contact with any other inmates in the prison, to contact potential witnesses, to discuss my case with anyone other than prison officials, to have my own doctor examine the cuts on my forearm, which were initially the subject of physical examination on the evening of August 22, 1979, or to have an attorney to assist me in any way in contacting witnesses, preserving evidence, or generally advising me with respect to the murder charges on which I am now being tried.

8. Until you have been inside the prison, it is difficult to understand the extreme differences between living in the general prison population, which inmates call "Mainlining" and being held in solitary confinement in ADU, or "the hole." A typical day in the general population begins at 6:00 a.m. in the morning when the cell doors are opened up for breakfast, and inmates can leave their cells and walk about the units, and go to the dining hall. At approximately 8:00 A.M., there is a work call, and inmates in the general population go out to their assigned job, which may include, for example, carpentry, work in the cable shop, or work on the grounds. When I was mainlining, I worked in the carpentry shop, until I was injured on the job. During the period of my recovery from that injury, I was assigned the job of sweeping in and around the recreational shack, which is outside the main prison unit. At noontime, the inmates are called back in to the dining hall, and after lunch, return to their work areas until approximately 4:00 p.m., when everyone is required to go back to their cell block for the afternoon count. From approximately 4:00 p.m. until 4:30 p.m., each inmate is locked in his individual cell. This 30-minute period is the only time during the entire day

when inmates are confined to their individual cells. At approximately 4:30 P.M., the cell doors are opened again, and the call of units to the dining hall starts. After dinner, inmates may choose to go see a movie (there are approximately four different movies every week), go to the recreational yard to exercise, go to the gym to exercise or workout, or go back to their cells. At about 8:30 p.m., everyone must return to their respective units, but inmates are not locked into their individual cells at this time, and may move freely about the units. Many of the units have pool tables, and other forms of recreation which are available during this time. At approximately 10:00 p.m., inmates are given the option of going to their cells to go to sleep or going to the t.v. room to watch t.v. Periodically, guards will come to the t.v. room to see which inmates want to return to their cells to go to sleep. The t.v. room is closed down for the night at about midnight. Although I was not a participant at the time I was sent to ADU, there are also available to inmates in the general population a variety of educational programs, including some which lead to college degrees. Also, when you are mainlining, you are permitted to have toiletries, books, and other personal items in your cell. Prison authorities provide each inmate in the general population with a bulletin board in his cell, so that photographs and similar personal items may be put on the wall. In addition, the doors to cells for prisoners in the general population are solid, with a small window, which affords privacy for the inmate when he is in his cell. Inmates in the general population are also provided access to a telephone room, where they can make telephone calls in private. There is no limit to the number of calls that can be placed through this system. Also, for inmates in the general population visiting hours are from 12:00 p.m. to 3:30 p.m. on the weekdays, and from 8:00 a.m. to 3:30 p.m. on the weekends. There are no limitations on the amount of time that inmates in the general population may spend with their visitors, and there is an outside area which has been provided for the use of prisoners and their families.

9. Solitary confinement in ADU or the "hole" is entirely different. Inmates in the hole are held in their cell for the

entire day, with the exception of one 30-minute break. This 30 minutes is the only time during the day when you are permitted out of your cell. During this time, you may shower, and if there is time, exercise. You are permitted absolutely no contact with prisoners, either during the time you are confined to your cell, or during the 30-minute break period. Relief periods are staggered, so that only one inmate in ADU at a time is out of his cell. Once every seven days, the guards take you out of your cell into a stone enclosure outside to exercise for approximately one hour. There is no training equipment in this area, no grass, and no view or access to any other prisoners. The area is entirely concrete, with a concrete floor, surrounded on all sides by concrete walls. This area can get very hot in the summer. Inmates in the hole eat in their cells, and each cell has a toilet. Also, the doors to the cells are comprised of bars, so that there is absolutely no privacy from the guards. Whereas prisoners in the general population are permitted to purchase carpets to put on their floors if they desire, no such privilege is allowed in the hole, and the cement cell floors must remain uncovered. Also, whereas prisoners in the general population are permitted to purchase clothing, toiletries, coffee, and other goods at the commissary, prisoners in ADU have a restricted list of goods which they may purchase from the commissary. For example, you must wear the khaki clothes issued to you by prison authorities when you are in ADU, and you cannot buy any clothes of your own, or wear any clothes which you previously purchased. Also, you are not permitted to purchase any objects that come in metal or glass containers. Inmates held in the hole are permitted one telephone call per month, and this call must be made in the presence of a counselor, guard, or case manager. Visitation hours are the same as those for the general population, but inmates in the hole are limited to two hours with their visitors. Furthermore, at any time more than five inmates from ADU are in the visiting area, the first ADU prisoner to have arrived is taken back to his cell, and his visitation period cut off. ADU prisoners and their families are denied access to the outside portion of the visiting area. In ADU, lights are out

between 9:30 p.m. and 10:00 p.m. Finally, inmates in ADU are not permitted to participate in any of the prison's educational, recreational, or work programs, nor are they permitted any television or movie rights of any kind.

10. Another problem with being held in solitary confinement in ADU is that it creates a bad reputation for the inmate in the general prison population. Some inmates are placed in ADU at their own request for "protective custody". When these inmates are released back into the prison population, it is generally perceived that they cannot be trusted, either because they have informed on other inmates or for some other reason. As a result, their physical safety is in great jeopardy when they are released from ADU. On the other hand, if prison authorities accuse you of having harmed another inmate, and place you in ADU for that reason, it is very likely that the inmate you have been accused of injuring has friends who will mount a vendetta against you when you are returned to the general population. Once in the ADU, there is no way to speak out against the rumors which develop around your placement in solitary confinement. When you are suddenly released back into the population, it can be, and usually is, very dangerous. Basically, it is very difficult to develop a reputation for keeping clear of trouble, and not getting involved in other people's problems. Yet, if you do not achieve this reputation, you are in great jeopardy from other inmates while you are in the prison population. When you are sent to ADU, this reputation is destroyed. Until you prove otherwise, it is generally perceived that you have wronged another inmate, or informed on the general prison population. Inmates in the general prison population refer to prisoners who have come out of ADU as being "shaky". No one in prison is safe with that kind of a reputation.

11. After my incarceration at the Los Angeles County Jail for purposes of my post indictment hearing, I was transported to Terminal Island, where I was held in the Terminal Island solitary confinement unit. Subsequently, I was returned to the Los Angeles County Jail, where I am now being held, pending my trial.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of July, 1980, at Los Angeles, California.

/s/

ROBERT E. MILLS

U. S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION INCIDENT REPORT		NAME OF INSTITUTION FBI - Los Angeles, Calif.	
PART I - INCIDENT REPORT			
2. NAME OF INMATE HILLS, Robert	3. REGISTER NUMBER 32287-136(0)	4. DATE OF INCIDENT 8-22-79	5. TIME App 5:15
6. PLACE OF INCIDENT E-Unit's third Floor Dues	7. ASSIGNMENT	8. QUARTERS	
9. INCIDENT KILLING & ASSAULTING ANY PERSON	10. CODE 300/111		
11. DESCRIPTION OF INCIDENT Confidential information received indicates that you (HILLS) did stab inmates HALL, Thomas Reg. No. 36683-136(B) & WELLS, Gerry Reg. No. 20125-118(E). Inmate HALL died from his stab wounds and inmate WELLS was seriously injured.			
12. SIGNATURE OF REPORTING EMPLOYEE <i>fred murray</i>			
30:15 PM 8-22-79		13. NAME AND TITLE (PRINTED) Fred Murray, Corr. Supv.	
14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY <i>✓</i>		15. DATE INCIDENT REPORT DELIVERED 8-23-79	16. TIME INCIDENT REPORT DELIVERED 6:15 AM
PART II - COMMITTEE ACTION			
17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT <i>"I had nothing to do with that. I went to see my attorney."</i>			
18. IT IS THE FINDING OF THE COMMITTEE THAT: YOU DIDN'T DO YOU COMMITTED THE PROHIBITED ACT AS CHARGED YOU COMMITTED THE FOLLOWING PROHIBITED ACT: <input checked="" type="checkbox"/> <input type="checkbox"/>			
YOU DID NOT COMMIT A PROHIBITED ACT <input type="checkbox"/>			
19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION <i>Based on the confidential sources the UDC finds Hills guilty of the charge.</i>			
20. COMMITTEE ACTION <i>Refer to SOC with the recommendation to facilitate a statutory trial, time and transfer to the prison Central unit.</i>			
21. DATE OF ACTION <u>Sept 19, 1979</u> <i>Murray, C.P.</i>			
INMATE AFTER COMMITTEE ACTION <i>John [Signature]</i> MEMBER			

Page 2

Name of Inmate: MILLS, Robert E. Reg. No. 322237-138(J) Hearing Date: 3-13-79

III. C. (Continued)

4. The following persons requested were not called for the reason(s) given:

5. Unavailable witnesses were requested to submit written statements and those statements received were considered _____

6. Documentary Evidence: In addition to the Incident Report and Investigation, the Committee considered the following documents: _____

E. Confidential information was considered by the IDC and not provided to inmate _____

IV. FINDINGS OF THE COMMITTEE

A. The act was committed as charged.

B. The following act was committed:

C. No prohibited act was committed:

Expunge according to Inmate Discipline PS.

V. SPECIFIC EVIDENCE RELIED ON TO SUPPORT FINDINGS

Incident report and investigation

VI. SANCTION OR ACTION TAKEN

Pardon all days good time; continues in ADU under Team control. Refer to Marion Control Unit.

Offense Severity Standard

VII. REASON FOR SANCTION OR ACTION TAKEN

Incident report and investigation.

VIII. APPEAL RIGHTS:

The inmate has been advised of the findings, specific evidence relied on, action and reasons for the action. The inmate has been advised of his right to appeal this action within 30 days to the Chief Executive Officer. A copy of this report has been given to the inmate.

IX. INSTITUTION DISCIPLINE COMMITTEE

Wm. S. R.H.

Hillman
EXHIBIT A

PTI, Lompoc, CA

InstitutionADMINISTRATIVE DETENTION ORDER

22 Aug. 79

Date

TO : Special Housing Unit Officer
 FROM : F. Ruiz, Correctional Supervisor
 SUBJECT: Placement of PIERCE, Richard, Reg. No. 20671-148(J)
 In Administrative Detention

The above named Inmate

(a) Is pending a hearing for a violation of institution regulations;

(b) Is pending investigation of a violation of institution regulations;

(c) Is pending investigation or trial for a criminal act;

(d) Is to be admitted to Administrative Detention

(1) Since he or she has requested admission for protection;

[I hereby request placement in Administrative Detention, for my own protection.]

Inmate's Signature

(2) Since a serious threat exists to individual's safety as perceived by staff, although person has not requested admission; referral of the necessary information will be forwarded to the IDC for appropriate hearing.

(e) Is pending transfer or is in holdover status during transfer;

(f) Is pending classification; or

(g) Is terminating confinement in Disciplinary Segregation and has been ordered into Administrative Detention by the IDC.

It is this officer's decision based on all the circumstances that PIERCE's continued presence in the general

(Inmate's name)

population poses a serious threat to life, property, self, staff, other inmates, or to the security of the institution; by C4599-#200125-148(X).

STANDING OF INMATES HALL #36013-136(2)-C4599-#200125-148(X)

Therefore, PIERCE, Reg. No. 20671-148, is to be placed in Administrative Detention until further notice.

*In the case of IDC action, reference to that order is sufficient.

In other cases, the officer will make an independent review and decision, which is documented here.

cc: Inmate Concerned

Chief Correctional Supervisor

Unit Team

Exhibit C

STI, Lompoc, CA

InstitutionADMINISTRATIVE DETENTION ORDER

22 Aug. 79

Date

TO : Special Housing Unit Officer
 FROM : F. Muns, Correctional Supervisor
 SUBJECT: Placement of MILLS, Robert, Reg. No. 32287-138(J)
 In Administrative Detention

The above named Inmate

(a) Is pending a hearing for a violation of institution regulations;

(b) Is pending investigation of a violation of institution regulations;

(c) Is pending investigation or trial for a criminal act;

(d) Is to be admitted to Administrative Detention

(1) Since he or she has requested admission for protection;

[I hereby request placement in Administrative Detention, for my own protection] _____ [Inmate's Signature]

(2) Since a serious threat exists to individual's safety as perceived by staff, although person has not requested admission; referral of the necessary information will be forwarded to the IDC for appropriate hearing.

(e) Is pending transfer or is in holdover status during transfer;

(f) Is pending classification; or

(g) Is terminating confinement in Disciplinary Segregation and has been ordered into Administrative Detention by the IDC.

It is this officer's decision based on all the circumstances that MILLS' continued presence in the general

(Inmate's name)

population poses a serious threat to life, property, self, staff, other inmates, or to the security of the institution because *

PENDING INVESTIGATION IN THE STABBING OF INMATES HALL AND MELLEN

Therefore, MILLS, Reg. No. 32287-138(J), is to be placed in Administrative Detention until further notice.

*In the case of IDC action, reference to that order is sufficient.

In other cases, the officer will make an independent review and decision, which is documented here.

cc: Inmate Concerned

Chief Correctional Supervisor

..Unit Team

Exhibit B

DECLARATION OF RICHARD E. DROOYAN

I, RICHARD E. DROOYAN, hereby declare as follows:

1. I am an Assistant United States Attorney for the Central District of California, and have been assigned the case of United States v. Robert Eugene Mills, Richard Raymond Pierce, Case No. CR 80-278-WPG.

2. I am familiar with the facts set forth in this Declaration, and could testify to these facts from my own personal knowledge.

3. In mid-September 1979, I was assigned to supervise an investigation into the murder of Thomas Hall on August 22, 1979, at the Federal Correctional Institution (FCI), Lompoc, California. On September 18, 1979, I had my initial conversation with Special Agent (SA) Tom Mansfield in which he summarized the results of his preliminary investigation.

4. Between September 1979 and March 27, 1980, I had numerous telephone conversations and meetings with SA Mansfield. I repeatedly reviewed the numerous memoranda of interviews he conducted, viewed the physical evidence, toured the Lompoc facility on March 7, 1980, and personally interviewed five inmate witnesses. In addition, I examined witnesses during four sessions of the Federal Grand Jury which returned an indictment in this case.

5. Although a substantial amount of evidence was secured by the end of November 1979, additional evidence which is material to the presentation of the Government's case was obtained up to the time of the indictment. In particular, additional evidence was obtained from Reginald Cook on March 6, 1980 and Fred Medina on March 7, 1980. Prior to this time, I did not know whether either of these inmates would testify at trial.

6. During the four months preceding the indictment, leads were investigated by the FBI. SA Mansfield and I had numerous conversations regarding the results of these investigations and the presentation of the case to the Federal Grand Jury.

7. Although some additional investigation remained to be conducted, the matter was presented to the Grand Jury for

indictment on March 27, 1980, because I felt that Cook and Medina provided additional evidence which substantially strengthened the Government's case. In addition, I had two cases scheduled for trial in April and I felt that I had to seek an indictment by the end of March or delay the presentation until some time in May of 1980.

8. Between September 1979 and March 27, 1980, I was involved in the preparation and trial of three cases. One case lasted six days, one case four and one-half days, and one case one and one-half days. I also prepared two cases which were tried in April 1980. In addition, I was involved in numerous investigations which resulted in the return of five indictments by Federal Grand Juries.

9. My first contact with the Bureau of Prisons officials regarding this case took place on March 7, 1980 when I toured the prison. At no time prior to the return of the indictment did I ever have any discussions with these officials regarding the status of the Government's investigations, the segregation of Mills and Pierce, or the prison's disciplinary proceedings.

10. At no time did I delay the proceedings in this case to obtain some tactical advantage or for any other reasons. At all times, I sought to handle this investigation in a manner that was fair to all concerned.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: This 14th day of July, 1980.

/S/

RICHARD E. DROOYAN

DECLARATION OF THOMAS G. MANSFIELD

I, THOMAS G. MANSFIELD, hereby declare as follows:

1. I am a Special Agent of the Federal Bureau of Investigation, assigned to the Santa Maria resident agency. I am the case agent responsible for the investigation in *United States v. Robert Eugene Mills and Richard Raymond Pierce*, Case No. CR 80-278-WPG.

2. On August 22, 1979, I commenced an investigation into the murder of Thomas Hall at the Federal Correctional Institution (FCI) at Lompoc, California. Between 6:00 p.m. and 6:30 p.m. on August 22, I was notified by FCI officials that a murder had taken place in the prison at approximately 5:10 p.m. that day. I then proceeded to the prison and arrived at approximately 6:45 p.m. I immediately reviewed the situation with the Correctional Supervisor and other FCI officials. At approximately 7:30 p.m., I examined defendants Mills and Pierce. Thereafter, I took various items of clothing from them, interviewed the prison doctor, prepared a photographic display and interviewed E Unit inmate Gary Mellen in the Intensive Care Unit of the Vandenberg Air Force Base hospital where he was receiving treatment for a stab wound.

3. My activities during the evening of August 22, 1979 were for the purpose of determining who murdered Thomas Hall and obtaining and preserving relevant evidence. At no time did I take custody of Mills or Pierce, place them under arrest, or seek to obtain an arrest warrant.

4. During the evening of August 22, 1979, following Hall's murder, FCI officials briefly interviewed approximately 60 E Unit inmates to determine if anyone had information about the murder. FCI officials also searched the various areas in the prison, including E Unit, the main corridor and J Unit, for weapons and evidence. Stocking caps, a knife and various items of clothing were secured and they were booked into the evidence locker.

5. On August 23, 1979, the Santa Barbara Coroner's Office conducted an autopsy on the body of Thomas Hall.

6. On the following dates, I personally conducted interviews of FCI employees, FCI inmates, and/or other potential witnesses:

- a. On August 24, 1979, two employees and one inmate were interviewed at the FCI;
- b. On August 31, 1979, two employees were interviewed, and I obtained 23 photographs from Bruce Carter at the FCI;
- c. On September 4, 1979, three employees and four inmates were interviewed at the FCI;
- d. On September 5, 1979, one employee and six inmates were interviewed at the FCI;
- e. On September 7, 1979, one employee was interviewed at the FCI;
- f. On September 10, 1979, five employees and five inmates were interviewed at the FCI;
- g. On September 12, 1979, one employee and six inmates were interviewed at the FCI;
- h. On September 17, 1979, one employee and five inmates were interviewed at the FCI;
- i. On September 18, 1979, three inmates were interviewed at the FCI;
- j. On September 19, 1979, one employee and four inmates were interviewed at the FCI;
- k. On September 20, 1979, two employees and three inmates were interviewed at the FCI;
- l. On September 24, 1979, three inmates were interviewed at the FCI;
- m. On October 1, 1979, one inmate was interviewed at the FCI;
- n. On October 3, 1979, five inmates were interviewed at the FCI;
- o. On October 4, 1979, one inmate was interviewed at the San Luis Obispo County Jail;
- p. On October 9, 1979, eight inmates were interviewed at the FCI;
- q. On October 10, 1979, an employee of the Veterans Administration was interviewed regarding money received by Hall;

r. On October 16, 1979, two inmates were interviewed at the FCI;

s. On October 22, 1979, eight inmates were interviewed at the FCI;

t. On October 23, 1979, three inmates were interviewed at the FCI;

u. On October 25, 1979, one inmate was interviewed at the FCI;

v. On October 31, 1979, two inmates were interviewed at the FCI;

w. On November 1, 1979, one inmate was interviewed at the FCI;

x. On November 2, 1979, two inmates were interviewed at the FCI;

y. On November 7, 1979, two inmates were interviewed at the FCI;

z. On November 14, 1979, one employee was interviewed at the FCI;

aa. On December 12, 1979, one inmate and a friend of an FCI inmate were interviewed at the FCI;

bb. On January 3, 1980, a friend of an FCI inmate was interviewed at the FCI;

cc. On January 4, 1980, one inmate was interviewed at the FCI;

dd. On January 16, 1980, two inmates were interviewed at the FCI;

ee. On January 17, 1980, one inmate was interviewed at the FCI;

ff. On January 18, 1980, one inmate was interviewed at the FCI;

gg. On February 12, 1980, one inmate was interviewed at the FCI;

hh. On February 20, 1980, one inmate was interviewed at the FBI in Los Angeles;

ii. On March 7, 1980, I interviewed two inmates at the FCI with Assistant United States Attorney Richard E. Drooyan.

7. I have in my possession FBI interview reports from other FBI agents indicating that they interviewed witnesses in this case on the following dates:

- a. October 11, 1979;
- b. November 15, 1979;
- c. February 5, 1980; and
- d. February 11, 1980.

8. I first contacted the United States Attorney's Office regarding the murder of Hall in the first week of September 1979. At that time, I spoke with Assistant United States Attorney John Vandevelde and requested the assignment of an Assistant United States Attorney for the purpose of bringing certain inmate witnesses before a Federal Grand Jury.

9. My first conversation with Assistant United States Attorney Richard E. Drooyan regarding the details of my investigation took place on September 18, 1979. At that time, I related the status of my investigation, reviewed the evidence I had discovered, and requested AUSA Drooyan to commence a grand jury investigation.

10. The federal grand jury investigating this case heard testimony from inmate witnesses on the following dates:

- a. October 18, 1979;
- b. November 15, 1979; and
- c. March 5, 1980.

On each occasion, I travelled to Los Angeles and interviewed these inmate witnesses with Assistant United States Attorney Richard E. Drooyan prior to their grand jury appearances.

11. In order to insure the cooperation of the witnesses who appeared before the grand jury, arrangements had to be made to transfer these inmates to other prisons for security reasons. On numerous occasions, I contacted the Bureau of Prisons to facilitate these transfers.

12. On October 18, 1979 and March 27, 1980, I testified before the Federal Grand Jury investigating this case. On each occasion, I met with Assistant United States Attorney Richard E. Drooyan regarding my investigation and my testimony.

13. During the course of the investigation, numerous items of physical evidence were sent back to the FBI laboratory in Washington, D.C. for analysis, including blood samples, hair samples, finger-prints and handwriting exem-

plars. I have received reports from the FBI laboratory analyzing these items dated November 14, 1979; November 15, 1979; December 10, 1979; and February 15, 1980.

14. Agents of the FBI have conducted interviews with over 100 witnesses in this case, and many of these witnesses were interviewed on two or three occasions. In addition, I have conferred with FCI officials and Assistant United States Attorney Richard E. Drooyan, in person and by telephone, on numerous occasions throughout my investigation.

15. On March 26, 1980, I completed my prosecutive report pertaining to this case. This report, which contained summaries of all interviews and a review of the evidence, was in excess of 200 pages.

16. At no time did I ever delay my investigation to obtain a tactical advantage or for any other reasons. At all times, I conducted this investigation as expeditiously as I could given my caseload and other commitments.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: This 7th day of July, 1980.

/s/

THOMAS G. MANSFIELD

DECLARATION OF M. RANDALL OPPENHEIMER

I. M. RANDALL OPPENHEIMER, declare and state:

1. I am one of the attorneys for defendant Robert E. Mills. I have personal knowledge of the matters set forth in this declaration.

2. Counsel for Mr. Mills understand that the government intends to call an inmate at trial to testify about a conversation he had with Mr. Mills while both were receiving visits in the visitors' room at FCI, Lompoc. Defendants' investigation discloses that Mr. Mills and the inmate in question were never in the visitors' room at the same time. However, in conversations with employees of the Federal Bureau of Prisons at FCI, Lompoc, subsequent to July 7, 1980, counsel for Mr. Mills were informed that visitor registration cards for inmates (which record dates and times an inmate receives visitors) are routinely destroyed when the inmate to which they relate is transferred to an institution other than Lompoc. The government has been unable to produce the visitor registration cards for the inmate witness in question, and it is counsel's understanding that these cards were routinely destroyed when he was transferred out of Lompoc to a different institution. Counsel are now precluded from using this inmate witness' visitor registration cards to impeach his testimony.

3. Counsel for Mr. Mills were informed by their court appointed expert in forensic criminology subsequent to July 7, 1980 that the blood stains on the physical evidence identified by the government as pertaining to this case (which was not provided to defendants until July 3, 1980) are now too old for all intents and purposes to permit blood typing.

4. I have reviewed statements of witnesses whom the government intends to call at trial in this matter, and have determined the following:

(a) Government interviews of prison employees who will be called to testify at trial were conducted between August 22, 1979, when Thomas Hall was murdered, and September 20, 1979;

(b) Government interviews of inmates who will testify at trial as government witnesses were conducted

between August 22, 1979 and October 18, 1979, with the exception of one inmate who was reinterviewed on November 15, 1979 for the purpose of reviewing a photo display, and one other inmate who indicated in January 1980 that he would cooperate if relocated outside the federal prison system. This inmate subsequently provided his testimony in an interview conducted by the government in March 1980.

5. I have reviewed the list of physical evidence identified to the defendants by the government as pertinent to this case, and have compared that list with the FBI laboratory reports provided to defendants by the government dated Novemeber 14, 1979 and November 15, 1979. Based on this comparison, I ascertained that of the 30 items of physical evidence identified by the government, 21 had been analyzed by the FBI laboratory by November 15, 1979.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on this 17th day of July, 1980.

/S/

M. RANDALL OPPENHEIMER

SUPPLEMENTAL DECLARATION OF
EDWIN S. SAUL, ESQUIRE
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

I, Edwin S. Saul, declare:

1. I am an attorney licensed to practice law by the State of California. I am admitted to practice before this Court. My office is located at 15760 Ventura Boulevard, Encino, California. If I was called to the stand as a witness, I could testify to the following.

2. Shortly after I was appointed to represent Mr. Pierce, I went to Lompoc to interview prospective witnesses. I found a great deal of resistance based on circumstances that exist with regard to prison crimes. Numerous inmates told me that I would basically find the rest of the inmates divided into two different and distinct groups. A small group of people after every such incident would scurry around the prison trying to find out from others as much as they could about the incident so that they could go to the government and, true or not, tell the Government what that inmate thought the Government might want to hear in exchange for something, a better prison job, a letter to the Parole Commission, a transfer to a different prison or a camp, or whatever. From what I was told it would appear that the Government would have to be very careful to make sure that the witnesses they were calling were indeed perceptive to the events that they were willing to testify to. I was told that the majority of the inmates would simply not want to get involved. Most seem to sincerely believe that the prison officials would retaliate in some way if they agreed to testify for the defense. To a man, each and every inmate I spoke with would, at first, express regret but decline to testify. Some have changed their minds, and, as indicated infra, some have changed their minds back again (see this Declaration, sub paragraphs 11A through 11E, infra).

3. Another major problem in trying to get inmates to testify on behalf of the defense relates to the fact that victim Hall was apparently very heavily into drug dealing within the prison walls. The discovery material indicates that many of the Government's inmate witnesses will testify to

their participation in drug transactions which are in violation of State and Federal laws and also in violation of prison rules. These inmates obviously do not fear discipline or prosecution since, in most cases, the Government has actually agreed to help these inmates in some way and would obviously not be gaining their participation if the inmates had a worry about either discipline or prosecution. Several inmates who had information which I would want to elicit at the Trial would only agree to testify if I could assure them that there would be no discipline imposed by the prison based on what they would admit in their testimony. Since I could obviously not do this, these individuals would not be witnesses for the defense. Similarly, I will not be in a position to call to the stand an inmate who revealed to me in confidence that he had given Hall a weapon (subsequently found under Mellon's mattress) in response to a request from Hall which explicitly pointed out who and what Hall was afraid of.

4. My efforts in even finding prospective witnesses was hampered by the fact that Mr. Pierce had only been at Lompoc since May of 1979. Most of the people he knew by only a first name, a last name, or, more prevalent yet, a nickname. It seems that a great number of people are known within the prison by nicknames. In a meeting that I had with Lompoc F.C.I. Paralegal Officer, Gary Roberts, I inquired about these nicknames. Mr. Roberts conceded that many, if not most, of the inmates were known by a nickname, but admitted that the prison kept no record of these names. As a matter of fact, Mr. Roberts asked me if I would give him a list of the nicknames I was eventually successful in tracking down since it was quite common for the prison to be asked about this information.

5. Among the nicknames that I tried to locate were: Little Charlie, Henry's Kid, Hat, Dollars, Crow Dog, Buzzard, Indian, Droopy, The Hippie, Sluggo, Ole, Mouse, Cowboy, Fast Freddie and Weasel. In many instances I had a first name and a unit like "Gary from J Unit", or a last name and a unit like "Chavetz in H Unit". In most cases I had only phonetic spellings. In talking to inmates to attempt to locate these individuals I was often told something: "Yeah, I

vaguely remember a guy named "Hat", but it's been so long I can't remember who that was." (Not a direct quote); or "Yeah, I remember a John in F Unit but I can't remember his last name now, I knew it then but that was almost a year ago." (Not a direct quote.)

6. In the first instance, although Mr. Pierce told me that he did make an effort to remember his whereabouts on August 22, 1979, his memory had been faded by the experience of being in Isolation for seven or eight straight months. He had made various notes of his recollections, but those were in his property which he has still not been able to obtain. As a secondary proposition, and perhaps even more important, Mr. Pierce had no way of knowing until I spoke with him in late May or early June, 1980, that it would be important for him to account for his time on August 21, 1979, or any day other than August 22nd, and seems to be finding it difficult, if not impossible, to reconstruct other events and alleged meetings.

7. Mr. Pierce told me that he asked for a lawyer almost from the first instant when he was questioned and continued to ask for a lawyer as frequently as he could during the seven or eight months that followed. Being incarcerated, of course, he was not in a position to earn money to hire his own lawyer. The possibility of him doing some leg work on his own was completely taken away by his confinement in isolation with no ability to track people down, learn their true names, and give them some reason to keep in the memory events which at that point would only have been hours or days old. From my conversations with Mr. Pierce I believe that I would be able to establish that he was not at places that the Government claims he was at the times they claim he was there through competent, believable testimony which I am precluded from being able to introduce because I did not have occasion to start these efforts prior to May 22, 1980, the date upon which I was appointed.

8. Mr. Pierce told me that he believes that he ran into at least forty different inmates in the mess hall alone. As of this writing, I can count only five to seven people who feel they can testify to this and at least one is a man who I came upon through my own efforts quite by accident. Similarly,

Mr. Pierce advised me that there were maybe fifteen to twenty-five people who could have helped explain away certain physical evidence, but as of this time I have only between three and five who will discuss actually testifying.

9. Mr. Pierce, not having his request for the appointment of a lawyer honored, tried self-help. He made efforts to act in propria persona but was hindered by the sub-standard law library available to those in Isolation. The inmates in the general population have, by contrast, a respectable library and much easier access to it. Moreover, Mr. Pierce was hindered by the prison apparently imposing restrictions on his conduct which were not even imposed on other inmates in "I" Unit. Finally, whatever benefit might have resulted from Mr. Pierce's efforts over a period of some five to six months has been swept away as a result of the prison system's failure to restore him to his property.

10. As has been previously pointed out, if an attorney had been appointed for Mr. Pierce at the time he first requested one that attorney could have done many things to assist in the preservation of evidence and the preparation of a defense. The examples are numerous. The footprints on the third floor of "E" Unit, near where the incident occurred, were never measured. No effort was made to determine the size of the shoe or shoes which might have made these prints. The only attempt to preserve the evidence was a very unprofessional effort with an unsophisticated Polaroid Camera. Similarly, only poor quality photographs taken by someone who had not the slightest thought of assisting the defense nor any knowledge of defendant's explanation remain as evidence of what appear to be finger impressions on Mr. Pierce's bicep.

11. Perhaps the greatest problem created by the long, as yet unexplained, preindictment delay has been the defection of witnesses caused by concern over the length of time between event and trial. Most of these defections first came to my attention when I visited Lompoc on July 9, 1980. Indeed, I fear that there may be more of this between this date and the trial, but here is a sample of what exists as of the moment.

a. Mr. Diamond and I first visited Lompoc on or about June 13, 1980. As a result of our efforts, I learned of an inmate who was going to testify that he had a conversation with Guard Clifford Wilson in which Wilson, in the presence of another inmate, admitted that Wilson couldn't be sure who it was he saw descending the stairs on August 22, 1979. On July 9, 1980, this inmate told me that after he was last interviewed by a defense attorney he was forced to speak with the F.B.I. He was told that if his testimony was untrue he would be prosecuted for perjury. He then told me that he was going to have to decline to testify on behalf of the defense in regard to his meeting with Wilson. It was my impression that he still sincerely believed his meeting with Wilson was just as he had first related, but that so much time had transpired before he was first interviewed about the event, particularly in the face of a possible perjury charge, that he could not risk telling the story under oath. It is, of course, not uncommon to run into a very responsible prospective witness who sincerely believes an event happened in a particular way but is unwilling to, for example, make an identification from recollection, under oath.

b. Another inmate was going to testify that he had had a conversation with Gary Mellon on August 22, 1979 in which Mellon indicated that defendant Mills had been unwilling to help protect Mellon's friend Gary Hall from some black inmates who were threatening Hall's life as a result of a financial transaction that arose out of a large drug deal. Mellon told this inmate that if any harm came to Hall, Mellon would see to it that Mills went down with him. On July 9, 1980 this inmate told me that he was no longer willing to testify. We discussed his reasons. He told me that these events all happened a long time ago. I believe that he will now not be a witness because he is concerned about the possible questions that might arise as to the accuracy of his recollection, particularly the details which he quite candidly admits he cannot recall.

c. The efforts of Mr. Diamond and I turned up an inmate who was going to testify that Mr. Hall had told him several times before he was killed that Hall was having problems with some black inmates because of a dope deal, and that Hall had expressed fear for his life.

The last of these conversations occurred on either August 21st or August 22nd, 1979. On or about July 10, 1980, I learned that this inmate had also determined that he would definitely not testify. Although my own personal conversation with the prospective witness was not as extensive as my contact with the others, I assume that this witness is also very much concerned with the amount of time which has transpired. In one conversation he told me that it was very difficult to try to remember the details about events which took place so long ago. One inmate asked me why he was not contacted sooner, and expressed the feeling that he could have been of much more help if so much time had not gone by.

d. One witness was in the Mess Hall with the defendants at the time the Government alleged that they were elsewhere. I originally thought that this witness was going to testify, but on July 9, 1980 I learned that he would not. My impression is that he was still 90% certain of his recollection, but, particularly in view of admonitions as to perjury, would not repeat these recollections under oath.

e. Another inmate told me that he was outside the "E" Unit from about 4:45 P.M. to 5:15 P.M. on August 22, 1979. He said that he was watching the door and would have noticed the defendants, or either of them, if they left the unit that night; but that he was certain that he did not see either of them. He also indicated that one Government witness who claims to have been an eye-witness was not in a position to have personally perceived what he claims. This witness has also declined to testify. This witness also asked why he wasn't contacted sooner. On one occasion he asked me whether I thought that the prison officials or the F.B.I. would believe he was being truthful. I noted that there was in fact a great deal of time transpiring between the events and the time he was first asked about these events. I could not truthfully answer his question in the affirmative.

12. Efforts to accumulate information about the March, 1979 incident in which Hall's cell was burned down were almost totally thwarted by the time problem. Many inmates told me that they had at one time been aware of informa-

tion which might have been useful, but that they were now not really sure of these facts. Almost all of the prospective witnesses who voiced concern about the delay and the effect that it might have had on their recollection have categorically refused to testify. I have personally made the decision that I cannot afford to use a witness who would certainly state on cross-examination, and perhaps on direct, that he can't really be sure of what he has testified to because such a long period of time transpired before he was asked to try to recall these events with specificity. As outlined above, Paragraphs 1 through 3, infra, there are a number of general problems in trying to get inmates to come forth and even talk to defense attorneys, let alone testify. In this case these problems have been magnified one hundred fold by the time delay.

13. As of this moment there are still some individuals who may yet decline to testify because of reasons which are associated with the delay of which the defendants complain. In my own professional opinion I can state with sincerity that if I had been appointed to represent Mr. Pierce at the time he first requested an attorney, instead of having first been appointed on May 22, 1980 the chance of being able to establish reasonable doubt would have been significantly greater. The problems relating to the delay could easily make the difference between winning and losing this case.

I declared under penalty of perjury that the foregoing is true and correct.

Executed at Van Nuys, California on July 17, 1980.

/s/

EDWIN S. SAUL

**GOVERNMENT MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTIONS TO DISMISS INDICTMENT**

I

BACKGROUND AND FACTS

On August 22, 1979, Thomas Hall was brutally murdered at the Federal Correctional Institution (FCI) at Lompoc, California. Immediately following the murder, Special Agent (SA) Thomas Mansfield of the Federal Bureau of Investigation (FBI) commenced his investigation by reviewing the situation with prison officials, examining defendants Mills and Pierce, gathering and preserving physical evidence and interviewing witnesses. In the months following the murder, SA Mansfield and other agents of the FBI conducted interviews with over 100 witnesses. During this period, the United States Attorney's Office conducted a grand jury investigation into the murder, and the FBI laboratory analyzed all of the physical evidence which had been obtained following the murder. SA Mansfield and Assistant United States Attorney (AUSA) Richard E. Drooyan continually reviewed the status of the matter and, on March 27, 1980, just over seven months after Hall's murder, defendants Mills and Pierce were indicted by a Federal Grand jury. [See Declarations of Thomas Mansfield and Richard E. Drooyan submitted herewith]. The Government conducted a thorough and expeditious investigation into the murder of Hall and there were no unwarranted or unusual delays in presenting the matter to the grand jury for indictment.

II

**DEFENDANTS' SIXTH AMENDMENT RIGHTS TO
A SPEEDY TRIAL WERE NOT VIOLATED.**

A defendant's right to a speedy trial attaches once he has been accused, whether by arrest or the filing of formal charges. *United States v. Lovasco*, 431 U.S. 783, 789 (1977); *United States v. Marion*, 404 U.S. 307, 313 (1971). In this case, the defendants were accused when the grand jury returned an indictment on March 27, 1980. Their claim

that their speedy trial rights attached when they were placed in the Administrative Detention Unit is simply without merit.

While defendants are not unmindful of the Ninth Circuit's decision in *United States v. Clardy*, 540 F.2d 438 (9th Cir.), cert. denied, 429 U.S. 963 (1979) [Defendants' Memorandum of Points and Authorities, p. 9], they have chosen to disregard its import and to ignore the numerous other cases similarly decided. In *Clardy*, the Ninth Circuit specifically rejected defendants' claim that they "were *de facto* arrested by being placed in segregated confinement after the attack [inside the prison at McNeil Island]" and therefore, held that the Sixth Amendment right to a speedy trial did not encompass the period prior to their indictment by a Federal Grand Jury. 540 F.2d at 441. *Clardy* is consistent with every other case in which defendants have claimed violations of their Sixth Amendment right to a speedy trial as a result of administrative segregation by prison officials. In each case, the Courts explicitly held that administrative segregation is not an arrest for the purposes of the Sixth Amendment's guarantees. *United States v. Blevins*, 593 F.2d 646, 647 (5th Cir. 1979); *United States v. Manetta*, 551 F.2d 1352, 1354 (5th Cir. 1977); *United States v. Duke*, 527 F.2d 386 (5th Cir.), cert. denied, 426 U.S. 952 (1976); *United States v. Smith*, 464 F.2d 194 (10th Cir. 1972), cert. denied, 409 U.S. 1066 (1973).

Defendants' reliance upon *Cervantes v. Walker*, 598 F.2d 424 (9th Cir. 1978) is misplaced. The issue in *Cervantes* was what constitutes a "custodial interrogation" in prison for the purpose of requiring *Miranda* warnings. In holding that such warnings were not required in the context of that case, the Ninth Circuit did not discuss or even cite *Clardy* nor did it analyze Sixth Amendment rights in a prison setting. In contrast, the Court in *Clardy* explicitly analyzed the reasons why, in light of the Supreme Court's decision in *United States v. Marion*, *supra*, that a defendant's Sixth Amendment rights are not triggered by administrative segregation. 540 F.2d at 441.

In this case, defendants' Sixth Amendment right to a speedy trial attached when the indictment was returned on

March 27, 1980. *United States v. Clardy, supra*, 540 F.2d at 441; *United States v. Manetta, supra*, 551 F.2d at 1354. Defendants do not claim that there has been any violation of their Sixth Amendment rights to a speedy trial since the date of the indictment, and thus there is no need to make the analysis required by *Barker v. Wingo*, 407 U.S. 514 (1972). See, *United States v. Blevins, supra*.

III

THE DEFENDANTS' FIFTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW WERE NOT VIOLATED.

Whether an impermissible pre-indictment delay is sufficient to warrant a dismissal of criminal charges arises under the Due Process Clause of the Fifth Amendment. *United States v. Lovasco, supra*; *United States v. Kail*, 612 F.2d 443 (9th Cir. 1979). To establish a due process violation requires proof of an unwarranted delay by the Government resulting in actual prejudice to the defendant. In *United States v. Lovasco, supra*, 431 U.S. at 790, the Supreme Court noted that:

"Proof of prejudice is generally a necessary but not sufficient element of a due process claim and . . . the due process inquiry must consider reasons for delay as well as the prejudice to the accused."

Stated otherwise, "[p]roof of prejudice alone is not sufficient for dismissal of an indictment without consideration of the reasons for the delay." *United States v. Tempesta*, 587 F.2d 931, 933 (8th Cir. 1978).

The test formulated by the Ninth Circuit for determining if a defendant's Fifth Amendment rights have been violated by a pre-indictment delay is set forth in *United States v. Kail, supra*, 612 F.2d at 445 as follows:

"The due process test for impermissible pre-indictment delay requires a delicate balancing of the circumstances in each case. Primarily, the court must compare the gravity of the actual prejudice to the reasons for the delay."

Accord, Arnold v. McCarthy, 566 F.2d 1377 (9th Cir. 1978). The factors to be balanced are the actual prejudice to the defendant, the length of the delay, and the reasons for the delay. *United States v. Mays*, 549 F.2d 670, 677 (9th

Cir. 1977); *United States v. West* 607 F.2d 300 (9th Cir. 1979).

A. DEFENDANTS HAVE FAILED TO SHOW ACTUAL PREJUDICE TO THEIR DEFENSE.

A defendant must have specific proof of actual prejudice in order to warrant a dismissal of the indictment. In *United States v. West, supra*, 607 F.2d at 304, the Ninth Circuit stated that "[t]he crucial element in the due process test established by *Mays* is the finding of actual prejudice to the defendants. The satisfaction of this element is a prerequisite to finding a due process violation." Thus, a defendant "must show not only the loss of [a] witness and/or evidence but also demonstrate how the loss is prejudicial to him." *United States v. Mays, supra*, 549 F.2d at 677. General allegations that witnesses' memories have faded or that witnesses are no longer available is insufficient to establish actual prejudice. *United States v. Kail, supra*; *United States v. West, supra*; *United States v. Ramos*, 586 F.2d 1078 (5th Cir. 1978).

Defendants Mills and Pierce have failed to make the required showing of actual prejudice in this case. The facts relied upon by Mills are contained in his Declaration submitted in support of the motion. For nine pages Mills relates the conditions of his confinement in the Administrative Detention Unit and the history of his prison disciplinary hearings. Nowhere does he claim, or even suggest that he is now prejudiced by the alleged delay. Mills does not even claim that witnesses are no longer available or that they are unable to recall the events surrounding Hall's murder. Mills' Declaration is simply a complaint about the conditions of his confinement. There is nothing to support a claim of actual prejudice resulting from any delay by the United States Attorney's Office or the FBI in presenting the case for indictment.

Pierce's claims, which are apparently based upon the Declaration of his attorney Edwin S. Saul [submitted with Pierce's separate motion to dismiss filed on June 30, 1980], are similarly devoid of any factual basis. Except for Mr. Saul's claim that certain unidentified witnesses will never be found, he alleges no facts which support a showing of

prejudice caused by the alleged delay. Even this claim lacks the specificity required to show actual prejudice; it does not identify the witnesses or nor does it indicate what they would testify to. Mr. Saul's remaining allegations regarding the questions which "would have been important" to ask at the autopsy and the preservation of the "fingerprint" impression on Pierce's arms not only are lacking in specificity and based upon speculation, but are unrelated to the alleged delay. What happened during the investigation immediately following the murder does not establish that there was prejudice *as a result* of any delay between the murder and the indictment.

The arguments fashioned by Mills' and Pierce's attorneys have no factual support whatsoever. They make general allegations that witnesses are unable to remember details, that critical witnesses have been transferred, that "various documents of potentially critical importance" have been lost, and that items of physical evidence "may have" a "benign explanation." [Defendants' Memorandum, pp. 1618]. These claims are unsupported by any specificity. No witnesses are identified as being unavailable or unable to recall the events surrounding the murder, no documents except for post orders are identified as being lost, and their claims regarding the the physical items are speculative at best. Moreover, the claims of prejudice relating to loss of documents and physical evidence are again based upon what occurred at or near the time of the murder, and not upon the alleged delay by the Government in seeking an indictment.

The instant case is factually very similar to *United States v. Blevins, supra*, which involved a seven month delay in a prison assault case. As a result of the pre-indictment delay, the defendant alleged that "his witnesses' memories faded and that they were unable to relate what actually happened," and that "because of his confinement in a segregation unit, potential witnesses in the general population of the prison were unavailable to him." In denying the defendant's motion to dismiss for pre-indictment delay, the Fifth Circuit held that his general allegations were insufficient to establish actual prejudice. 598 F.2d at 647.

**B. THERE WAS NO UNREASONABLE DELAY IN
PRESENTING THIS CASE TO THE FEDERAL
GRAND JURY FOR INDICTMENT.**

Once a defendant has met his burden of establishing actual prejudice due to "an unusually lengthy government-caused delay," the inquiry focuses upon the Government's reason for the delay. *United States v. Mays, supra*, 549 F.2d at 678. Regardless of "the degree of actual prejudice, a dismissal is not warranted absent 'some culpability on the government's part, either in the form of intentional misconduct or negligence.'" *United States v. Mays, supra*.

When the delay is caused by the Government's need to investigate crime and develop evidence, a dismissal for pre-indictment delay is unwarranted. *United States v. Lovasco, supra*, 431 U.S. at 795; *United States v. Robertson*, 588 F.2d 575, 577 (8th Cir. 1978). The Government is under no duty to file charges "as soon as probable cause exists" or when there is "enough evidence to establish guilt beyond a reasonable doubt." *United States v. Lovasco, supra*; *United States v. Ramos-Algernin*, 584 F.2d 562 (1st Cir. 1978); *United States v. Radmall*, 591 F.2d 548 (10th Cir. 1978). As long as the delay is for the purpose of investigating the case and not "solely to gain tactical advantage of the accused" there is no Due Process violation. *United States v. Lovasco, supra*.

Preliminarily, it should be noted that any delay in this case was minimal. The Government conducted an exhaustive investigation of a very serious crime. Given the nature of the crime and the nature of the investigation, a seven month period between the murder and the indictment was not at all unreasonable. In other cases involving longer periods, similar motions have been denied. E.g., *United States v. Kail, supra*, (two years, three months); *United States v. Dakow*, 453 F.2d 1328 (3d Cir.), cert. denied, 406 U.S. 945 (1972) (55 months from initiation of SEC administrative proceedings and 22 months from referral of case to United States Attorney by SEC); *United States v. Ferrara*, 459 F.2d 868 (2d Cir.), cert. denied, 408 U.S. 981 (1972); (slightly less than four years).

As set forth in the Declarations of Thomas Mansfield and Richard E. Drooyan submitted herewith, the Government immediately commenced to investigate the murder of Hall and continued with its investigation up through the return of the indictment by the Grand Jury on March 27, 1980. The investigation was continuous and evidence was obtained throughout the period of the investigation.

Defendants' claim that the Government had enough evidence by October 1979 [Defendant's Memorandum p. 13] ignores the realities of the Government's investigation and the problems inherent in prosecuting a serious crime. Although a substantial number of interviews had been completed by the middle of November 1979, additional evidence was obtained during the remainder of the investigation. When certain witnesses agreed to cooperate and provide additional information in March 1979, the Government promptly sought an indictment.

The Government is entitled to follow any additional leads and obtain all of the available evidence before seeking an indictment. Delay for this reasons does not violate the Due Process Clause. As stated by the Supreme Court in *United States v. Lovasco, supra*, 431 U.S. at 896:

*"In our view, investigative delay is fundamentally unlike delay undertaken by the Government solely 'to gain tactical advantage over the accused,' *United States v. Marion, supra*, 404 U.S., at 324, precisely because investigative delay is not so one-sided. Rather than deviating from elementary standards of 'fair play and decency,' a prosecutor abides by them if he refuses to seek indictment until he is completely satisfied that he should prosecute and will be able promptly to establish guilt beyond a reasonable doubt. Penalizing prosecutors who defer actions for these reasons would subordinate the goal of 'orderly expedition' to that of 'mere speed.' *Smith v. United States*, 360 U.S. 1, 10 (1959). This the Due Process Clause does not require."* 431 U.S. at 790-96. [Emphasis added; citations omitted].

Accord, Arnold v. McCarthy, supra, 586 F.2d at 1385 ("the prosecution fairly exercised its prosecutorial discretion to delay indictment until sufficient evidence existed to

obtain a conviction."); *United States v. Palan*, 571 F.2d 497 (9th Cir. 1978) ("due process does not prevent the prosecutor from delaying submission to the grand jury in order to acquire additional probative evidence.").

In this instant case, the government conducted a continuous investigation from the date of Hall's murder until the return of the indictment. The actions on the part of the United States Attorney and the FBI were for the purpose of building its case and not to gain a tactical advantage or prejudice the defendants.

IV

DEFENDANT DID NOT HAVE A SIXTH AMENDMENT RIGHT TO COUNSEL WHEN THEY WERE EXAMINED BY THE FBI.

For the purposes of defendants' motion to suppress evidence, the issue in this case is whether defendants' right to counsel under the Sixth Amendment attached when they were examined by FBI agents and prison officials during the evening of August 22, 1979 following the murder of Hall. At that time, evidence consisting of defendants' clothes and a sample of Mills' blood was obtained. In addition, agents observed certain marks on each defendant and saw Mills remove a spot of blood from his hand.¹

In *Kirby v. Illinois*, 406 U.S. 682 (1971), the Supreme Court identified when the right to counsel attaches as follows:

"[I]t has been firmly established that a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary proceedings have been initiated against him."

¹ With the exception of clothes that were obtained from the defendants' cells at a later date, no other physical evidence taken from them will be introduced at trial. In addition, the Government does not have any statements which were made by defendants to agents or prison officials after they were first examined by the agents. Accordingly, there is no issue under *Massiah v. United States*, 377 U.S. 201 (1964).

The initiation of adversary judicial proceedings requires more than just an arrest. *United States v. Derring*, 592 F.2d 1003 (8th Cir. 1973); *Carver v. Alabama*, 577 F.2d 1188 (5th Cir. 1978). It requires some formal action such as "formal charges, preliminary hearing, indictment, information or arraignment." *Kirby v. Illinois*, *supra*, 406 U.S. 689. In this case, adversary judicial proceedings were initiated when the indictment was returned on March 27, 1980.

Defendants' attempt to move their right to counsel to August 22, 1979 is based upon language from *Kirby* to the effect that the right attaches when "the adverse positions of government and defendant[s] had solidified." [Defendants' Memorandum, p. 21]. In quoting this passage out of context, defendants ignore the remainder of the sentence in which the Supreme Court indicated that "adverse positions" solidify *only* when "the govenrment has committed itself to prosecute..." *Kirby v. Illinois*, *supra*, 406 U.S. at 689. In this case, the United States Attorney's Office was not even notified of the murder until early September 1979. Moreover, a prosecutor was not assigned to supervise the investigation until the middle of September 1979. Thus, there was certainly no commitment to prosecute when defendants were initially examined by the FBI.

Defendants' reliance upon Administrative Detention Orders as functional equivalents of arrest warrants is misplaced. As noted earlier, defendants' confinement in the segregation unit did not even constitute an arrest for purpose of the speedy trial guarantees of the Sixth Amendment. See Section II, *supra*. *A fortiori* it did not constitute the initiation of formal judicial proceedings.

Defendants' Sixth Amendment claim is based upon a misperception of the relationship between the Bureau of Prisons on the one hand and the United States Attorney and the FBI on the other hand. While FCI officials may assist the FBI and the United States Attorney in the investigation of crimes in the prison, their primary responsibility is to maintain order and discipline among the inmate population. Mills and Pierce were placed in segregation for this

purpose, not for the purpose of assisting the FBI or hindering their ability to prepare a defense. As noted by the Fifth Circuit in *United States v. Duke, supra*, 527 F.2d at 390:

"Used as a method of disciplining or investigating inmates who break prison regulations, of protecting certain inmates from the general population, and of providing a general cooling-down period for inmates involved in events that could disrupt the general population, administrative segregation accompanying the breach of prison regulations is *in no way related to or dependent on prosecution by the federal government* of an inmate for that same offense as a violation of federal criminal law." (Emphasis added).

The Court further observed "that administrative segregation of a prisoner is an internal disciplinary measure that is totally independent from the criminal process of arrest and prosecution."

SA Mansfield examined the defendants and obtained various items of evidence on August 22 for the purpose of investigating the murder of Hall. When he arrived at the FCI, he immediately commenced an investigation to determine who murdered Hall and obtain relevant evidence. His investigation was not converted into the "functional equivalent" of formal charges by virtue of his discovery of evidence, including the defendants' physical conditions and their clothes, which focused suspicion on the defendants. At the time of the examination, Mills and Pierce did not have a right to counsel because it simply does not attach to a "routine police investigation," whether or not a suspect is in custody. *Kirby v. Illinois*, 406 U.S. at 690.

Even if the right to counsel attached during the evening of August 22—and the Government vigorously contends that it does not—defendants were not entitled to counsel when they were examined by the agents and their clothes were taken. In *United States v. Wade*, 388 U.S. 218 (1966), the Supreme Court held that counsel was required at a post-accusatory line-up. In reaching this result, the Court specifically distinguished "various other preparatory steps [in the gathering of the prosecution's evidence], such as systematized or scientific analyzing of the accused's finger-

prints, blood sample, clothing, hair and the like." 388 U.S. at 228. A physical examination is fundamentally unlike a line-up or a show-up, which is a confrontation between the accused and his accuser, *United States v. Wade, supra*; *Kirby v. Illinois, supra*, 406 U.S. at 695, and there is no right to the presence of counsel at such an examination.

V
CONCLUSION

For the reasons set forth herein, defendant's motions to dismiss and to exclude evidence should be denied.

GOVERNMENT OBJECTIONS TO PROPOSED ORDER DISMISSING INDICTMENT

I

SUMMARY OF RULINGS

1. The Government objects to paragraph 1 because a portion of the delay was attributable to defendants' requests for continuances.
2. The Government does not object to the proposed language in paragraph 2.
3. The Government objects to paragraph 3 because the court specifically relied upon the grounds set forth in paragraphs 1 and 2 in dismissing the indictment, and decided not to add this additional basis. Moreover, there is no evidence in the record that the defendants were held "incommunicado" or that they were not permitted to retain counsel for the purposes of interviewing witnesses and preserving evidence.

II

FACTUAL BACKGROUND

1. The Government objects to paragraph 1 because there is no evidence that the Government consistently denied defendants' request for counsel or continued the interrogation. Mills refused to make a statement in the absence of counsel [¶ 2] and no statements were taken from either of the defendants [Government's Opposition, p. 13].
2. The Government objects to paragraph 2 because it indicates that defendants were held in solitary confinement in the strip cells during the entire pre-indictment period. This is false and contradicted by Mills' own declaration; defendants were transferred to a regular cell in the detention unit on the morning following the murder [¶ 13]. Moreover, there is no evidence as to what the Bureau of Prisons' policy would have required within the first few months of their ADU commitment.
3. The Government objects to paragraph 3 because defendants were not reminded constantly by prison employees that they were under suspicion for the murder of Thomas Hall. The Government also objects to this paragraph

because there is no showing on behalf of defendant Pierce as to any of the matters set forth therein.

4. The Government objects to paragraph 4 because there is no showing on behalf of defendant Pierce as to any of the matters set forth therein. With respect to defendant Mills, there is no evidence to support his claim that the Government was preparing an indictment against him and, indeed, that finding is specifically contradicted by his own declaration [¶ 5, lines 22-25].

5. The Government objects to paragraph 5 because there is no evidence that the defendants requested or were forbidden to contact other inmates in the prison or potential non-inmate witnesses if necessary for the preparation of their defenses.

6. The Government objects to paragraph 6 because there is no showing that the defendants were in fact "stigmatized"; that the physical well-being of the defendants was in fact "threatened"; or that the defendants were ever threatened by any inmates. Moreover, there is no evidence as to what the inmates in the general population thought about the defendants having been placed in ADU.

7. The Government objects to paragraph 7 because there is no showing that the defendants suffered from "acute emotional and mental strains"; that the defendants were forced to live "daily with the fear of reprisal", or that the defendants were "wholly unable to begin preparing a defense." There is no evidence that defendants ever indicated that they feared reprisals or were actually threatened. Moreover, they were not "wholly unble" to prepare a defense since they were not incomunicado, could have contacted a lawyer and had access to the law library.

8. The Government objects to paragraph 8 because the Government does not concede this finding.

9. The Government objects to paragraph 9 because the Government conducted a continuous and expeditious investigation. Moreover, there was no evidence regarding the circumstances under which the government decided to seek blood and hair samples from the defendants.

10. The Government objects to paragraph 10 because there is no showing that the Government failed to preserve

documents "critical" to the defense effort, that there was any loss or alteration of physical evidence, that physical evidence essential to corroborate independent testimony was lost or altered, or that there was an irrevocable loss of inmate witnesses.

III LEGAL CONCLUSION

1. The Government objects to paragraph 1 because there was no finding by the Court that the "conditions of confinement" constituted an "arrest."
2. The Government does not object to the language used in paragraph 2.
3. The Government objects to paragraph 3 because the Government had not substantially completed its investigation by October 1979.
4. The Government objects to paragraph 4 because the Court did not use the right to counsel as an independent basis for dismissing the indictment. Moreover, the Government did not delay the commencement of adversary proceedings for eight months under the "guise of administrative detention."
5. The Government objects to paragraph 5 because the defendants were not "incommunicado," nor were they forbidden from contacting potential witnesses or seeking to retain counsel.

**EXCERPTS OF TRANSCRIPT OF HEARING ON MOTION
TO DISMISS INDICTMENT**

[48] LOS ANGELES, CALIFORNIA; MONDAY,
JULY 21, 1980; 10:00 A.M.

THE CLERK: Item 2, Criminal 80-278, United States v. Mills and Pierce. Hearing re motion to dismiss or in the alternative to exclude evidence.

MR. SAUL: Good morning, your Honor, Mr. Pierce is present, represented by Edwin S. Saul.

THE COURT: Good morning.

MR. DIAMOND: Charles Diamond and Randall Oppenheimer on behalf of Mr. Mills, who is present in court.

THE COURT: You all may sit down.

Mr. Drooyan, why were these men placed in the hold on the night of the murder?

MR. DROOYAN: Because following the prison investigation on that night, which included the interview of one of the Government's main witnesses, the examinations of the defendants, the prison officials concluded that there was evidence linking them to the murder.

THE COURT: They believed that they had committed the murder. They believed it most likely that they had committed the murder.

MR. DROOYAN: Certainly—I have not discussed the matter with the prison officials who made [49] the determination. There is no question that they believed there was certainly evidence to link them to the murder.

THE COURT: You know, I hope the prison isn't going to put a prisoner down in that hole, which I have seen, without substantially good reason, and giving credit to the prison people they must have strongly suspected that these men were the perpetrators of the murder. Isn't that so?

MR. DROOYAN: I certainly assume that, your Honor.

THE COURT: And they kept them there for what; seven or eight months?

MR. DROOYAN: Seven months, your Honor.

THE COURT: Seven months. And after the first couple of weeks or so, they were jolly well convinced that in all probability these men had committed the murder.

MR. DROOYAN: Your Honor, there were hearings in the middle of September—

THE COURT: Yes.

MR. DROOYAN: —in which they made determinations.

THE COURT: And they kept them there. If they had been on the street and the government had had that [50] substantial suspicion, they would have been arrested long since, wouldn't they?

MR. DROOYAN: Yes, your Honor.

THE COURT: And brought before a magistrate. And given an attorney, so that the attorney could represent their interests and perhaps begin an investigation. Isn't that so?

MR. DROOYAN: Yes, your Honor.

THE COURT: And that didn't happen with these men. They were, in effect, incommunicado for seven months even though they had sought an attorney—the assistance of an attorney.

MR. DROOYAN: They were not incommunicado, your Honor.

THE COURT: Tell me wherein they were not.

MR. DROOYAN: They had visits. They did have opportunity to communicate with people on the outside. They had contact with other prisoners.

THE COURT: Did they? How?

MR. DROOYAN: Well, within the I Unit, the isolation unit.

THE COURT: All right.

MR. DROOYAN: They did have access to the law library, your Honor.

THE COURT: If they had wanted to cause the [51] fellow prisoners that they think might be witnesses to—if they wanted to interview them or have somebody interview them and preserve their recollections, how could they do that?

MR. DROOYAN: Well, your Honor, they did have an opportunity to present witnesses on their own behalf to the

prison officials. They declined to take that opportunity, and to say that they didn't have the opportunity to talk to them or that the other prisoners were afraid I think begs the question.

They certainly had that opportunity to call the witnesses in their behalf and to have them present whatever favorable evidence there was in their behalf.

THE COURT: These men were strongly suspected of murder; otherwise they would never have been put in the hole, and a very able gentleman from the FBI wouldn't be spending six months investigating.

Why in heaven's name were they not given an attorney so an attorney could start an investigation for them before the inmates were spread all over the country or released?

You were on that case by September.

MR. DROOYAN: Yes, your Honor.

THE COURT: Didn't it occur to you that the focus of suspicion was on these men and they really ought [52] to have counsel?

MR. DROOYAN: It certainly occurred to me that the focus of suspicion was on these individuals, your Honor. I had no communication with the prison officials with respect to the status of these men until March.

THE COURT: You knew what the status was, did you not?

MR. DROOYAN: No, I did not, your Honor. This is my own fault. This is the first type of case like this I have handled. It really never occurred to me to check where these prisoners were until I went up to the prison in March.

THE COURT: I am not disposed to excoriate you, Mr. Drooyan, but the United States government was involved, and for purposes of this case I don't distinguish between the Department of Justice or the Bureau of Prisons. The fact of it is that these men were—I said incommunicado—semi-incommunicado for seven months while the government at its leisure was making a detailed investigation which on their behalf no one had even any opportunity to begin. Isn't that so?

MR. DROOYAN: Your Honor, it is true that the government was conducting an investigation during this period.

THE COURT: Yes.

[53] MR. DROOYAN: It is true that counsel was not appointed for these individuals. It is the government's position that appointed counsel is not required. It is not true that they did not have an opportunity through their own relatives and friends who were visiting them on regular occasions to seek outside counsel. Maybe that is an unrealistic view on my part, but they were not denied access to counsel in the sense that I think the Court is talking about.

THE COURT: They weren't? According to their affidavits, which are uncontradicted, they asked for counsel every opportunity they had.

MR. DROOYAN: And the prison officials did not appoint counsel, that is true.

THE COURT: They certainly didn't and denied their request.

MR. DROOYAN: What I am saying, your Honor, is they should not have gone through the prison officials when it was obvious that that wasn't going to get them what they wanted. They had access to people on the outside. That is what I am saying. If they wanted counsel, if they were serious about asserting that right, they could have communicated it to the people visiting them and done it that route. It was obvious, and I agree that the prison officials were unresponsive to their [54] requests.

THE COURT: They certainly were.

MR. DROOYAN: But once they are unresponsive, there are other avenues. They weren't in such incomunicado that they couldn't possibly communicate with anybody on the outside. That is not the way it happened.

THE COURT: So you say that even though the government would not cause counsel to be appointed for them they had a right to go—if a girlfriend were to visit them or a next door neighbor, they could say, "Go get me a lawyer," and somehow that person could go try to find a lawyer?

MR. DROOYAN: Your Honor—

THE COURT: Whether there is money to pay for it is another matter.

MR. DROOYAN: Your Honor, what I am saying is that if communications were made to people on the outside, I suspect a court would have appointed a lawyer and there

would have been counsel in this. But what they did was, having their requests denied or no response from the Bureau of Prisons, they didn't choose to pursue any other avenue to do it. Maybe in hindsight the Bureau of Prisons should have been appointing people following the hearings in the middle of September.

[55] THE COURT: Mr. Drooyan, the hole that the affidavit of one of these prisoners described is in accordance with my recollection. Was that a reasonable description?

MR. DROOYAN: In terms of the restrictions?

THE COURT: The facilities, yes, where the toilet is a hole in the floor, where they have no furniture, no bed. Do they have a bed?

AGENT MANSFIELD: Yes.

MR. DROOYAN: Your Honor—

THE COURT: Can you answer that, sir?

AGENT MANSFIELD: Yes, sir, they do have a bed and a toilet in the room, yes. The range they were in, which was on the B range, does have a toilet and a bed in the room. They are also allowed out on a daily basis for exercise, showering, and they are allowed outdoors outside to play basketball, handball.

THE COURT: With whom?

AGENT MANSFIELD: Other inmates.

THE COURT: The general population?

AGENT MANSFIELD: No. Inmates in the segregated unit, where they were, the administrative segregation.

THE COURT: Thank you.

I have read with considerable concern the case [56] of United States v. Clardy.

MR. DROOYAN: Your Honor, may I comment on that case?

THE COURT: Surely.

MR. DROOYAN: Mr. Oppenheimer I believe was responsible for the reply, and in that reply he indicates two things about that Clardy decision. One, it was limited to situations in which the administrative detention was used solely for the purposes of maintaining prison order, then citing United States v. Duke, in which the Fifth Circuit expressly recognized that not only was it a method for

disciplining or investigating inmates as well as providing a general cooling down period.

The second thing is that the reply indicates that in Clardy there was nothing in the record with respect to the deprivation that is involved in the [57] administrative detention, and that, therefore, the Court didn't specifically consider that, but in the opinion itself the Ninth Circuit noted specifically that actual physical restraint may have increased, and free association may have diminished, and yet even in light of that the Court looked at the administrative detention and decided that it didn't constitute an arrest for purposes of the Speedy Trial Act—speedy trial right under the Sixth Amendment.

THE COURT: Yes, I did see that. However, they did say:

"We do not say that appellant's status as prisoners automatically precluded assertion of the claim presently sub judice, but based upon all the facts and circumstances, their speedy trial claims are unpersuasive."

The Clardy case is certainly relevant to this situation, but I just can't see the government can contend that due process rights were not denied these men when for seven months they were kept under such circumstances that they themselves could not make any investigation among the prisoners, and I can understand that might be very difficult, but a fortiori they were not given the opportunity to have attorneys to preserve whatever case they might have had or been able to develop [58] while the government was, at its leisure, making its own investigation, apparently throughout the country, and by the time they did get an attorney, memories inherently had dimmed, and some of the prospective witnesses were strewn all over the country.

I just cannot understand how the government, who had made the focus of guilt upon these people to the point of keeping them in isolation or virtual isolation, could deprive them of an attorney despite their requests.

MR. DROOYAN: Your Honor, with respect to the isolation, the reason why they were in isolation after the first couple of months was because they were to be transferred to the Marion control unit.

THE COURT: They didn't transfer them.

MR. DROOYAN: No. I think the reason why they did not transfer them to the Marion control unit was because of the view that there would be an indictment coming out of this district and that it would be inappropriate to transfer them.

I think in other cases where there have been prison murders and substantially greater periods of time have elapsed between the date of the indictment and the date of the murder, inmates have been sent to the Marion control unit, in which the entire prison is, in effect, an isolation unit. My understanding of the conditions in [59] Marion is such that inmates do not leave their cells without handcuffs; they are severely restricted; and that it is, in effect, an isolation unit. But that didn't happen in this case.

THE COURT: Should I congratulate the government?

MR. DROOYAN: Well, your Honor, I think you should congratulate the government, because I think this is one of the fastest returns of an indictment we have had in this district in a murder case for a number of years.

The term in which the average murder case is returned is over a year, and we did this in seven months. We worked diligently. We pursued the investigation.

THE COURT: I don't doubt your diligence, but apparently it was a difficult investigation, and it would be just as difficult for the defendants, too, but it was a one-sided affair. You had these fellows cooped up while you were making the investigation against them, and they didn't have opportunity one to have an attorney make an investigation on their behalf.

MR. DROOYAN: Your Honor, my understanding of the basis for the Court's prior discovery rulings took that into account. I think that the defendants in this case have had more liberal discovery because of that fact [60] in order to permit them to see—now, I want to—

THE COURT: Over the opposition of the defendant, the Court did its best to make up for lost time—over the opposition of the government, I should say.

You fought that every step of the way.

MR. DROOYAN: I did, your Honor, and I want to advise the Court what the status of that is. Because of this hearing Mr. Saul and Mr. Diamond agreed that the government could turn over the material today and we have withdrawn the appeal on that matter.

All I can say is we proceeded as expeditiously as possible. I don't think they have established in their papers the prejudice necessary to establish a due process violation.

There are vague allegations that people have been transferred, that people don't want to come in and perjure themselves because they don't remember every detail, and I think that is inherently unbelieveable.

THE COURT: After eight months?

MR. DROOYAN: That somebody—I could understand somebody might not have all of the details, although I suggest to the court that the murder was well known in the prison at the time it occurred, and that people will recollect where they were and what happened [61] because of the significance of the event, but even if memories have dimmed somewhat, and that is not, your Honor, just by itself a basis for finding a due process violation, I submit the argument that people will not testify because they can't remember all of the details, because they are afraid of perjury indictments, is absurd.

THE COURT: All right.

MR. DROOYAN: That is the argument they are making. They are not making the argument that these people can't come in and testify as to generally what happened.

THE COURT: That is an argument they are making, but the one on which I am seeking to focus, Mr. Drooyan, is the fact that all this time they sought an attorney. The finger of suspicion was clearly upon them, and they did not have an attorney. And you have just previously acknowledged that if the finger of suspicion was that strong on people normally out on the street, why, they would have been arrested long since and they would have had people to represent them, and prisoners in Lompoc are not deprived of those constitutional rights by the mere fact that they are prisoners.

MR. DROOYAN: Well, your Honor, I think the Court has equated the prison situation to a murder which occurs

on the street, and I just don't think that they [62] are equal situations.

THE COURT: No, they are not. One is a prisoner and the other isn't, but that doesn't mean that the former are not entitled to an attorney when an investigation for murder is in process.

MR. DROOYAN: Your Honor, I mean the case law that the government cited to the court indicates they are not entitled to an attorney at this stage of the proceeding.

THE COURT: What says they are not entitled to an attorney? Nothing in Clardy says that.

MR. DROOYAN: No, but the Kirby case and the cases that say that it was to be at a formal accusation when the government initiates prosecution.

THE COURT: So there was really no accusation. They were just put there in solitary or semi-solitary because the government suspected them of committing the murder, but they didn't have to formally accuse them because they already had them under their control.

MR. DROOYAN: Your Honor, I think they are different situations. Because of the problems the prison has in maintaining discipline, the extraordinary latitude the courts give to the prisons in maintaining—

THE COURT: With respect, I cannot say that the government was not justified in segregating these [63] people, but I do say that the fact of segregating them is as close to an arrest as is possible with a person in prison, and all of those factors that the Supreme Court talked about with respect to the right to a speedy trial after arrest—many of them come into play here: the mental concern; the obliquity that occurs. I don't say that the government had to take them before the grand jury as promptly as they would have had to do if they were out on the street, but I do say that under the circumstances under which these men found themselves, if they requested an attorney, they were entitled to an attorney.

MR. DROOYAN: Well, your Honor, first of all, the Clardy decision is not a right-to-an-attorney decision.

THE COURT: That is right.

MR. DROOYAN: It is strictly a Sixth Amendment speedy trial case.

THE COURT: That is right.

MR. DROOYAN: In that case and the other cases the courts have each said the Sixth Amendment is not triggered with speedy trial purposes with the placements in administrative detention.

THE COURT: All right.

MR. DROOYAN: That is what the motion to [64] dismiss is based upon.

THE COURT: It is based upon due process also and the right to an attorney and the failure of the government to provide an attorney.

MR. DROOYAN: Well, I don't understand the motion to be based upon that, because I understand the claim of the right to an attorney to be a motion to exclude evidence, which is the third section of the brief, and the analysis that has to be undertaken with respect to first speedy trial and then due process indicates that the case should not be dismissed.

THE COURT: All right.

MR. DROOYAN: First of all, speedy trial, you should simply have the Clardy decision and those decisions. I think that is clear.

The key issue in the case would be with respect to the pre-indictment delay with respect to the due process clause. That is the only conceivable area.

There is a two-point analysis. One is the prejudice, assuming they have established the prejudice, and that is a high burden, every court that reviewed this issue has said that is a high burden that the defense must meet.

Then the question focuses on the Government's conduct in delaying the indictment. First of all, there [65] is no delay. It is eight months. We proceeded as expeditiously as you can. When you compare it to any other cases brought in this Court out of Lompoc, this is the fastest one.

The second thing is that there was no delay. There was no attempt to gain tactical advantages. We proceeded expeditiously, we followed up leads. Under a strict analysis, un-

der the due process clause there is no violation of their Fifth Amendment rights.

Then they move on to the claim of they were denied the right to counsel at time that they were examined by the FBI agents two hours after the murder, and they moved to exclude that evidence. I submit under any theory there was no right to counsel at that point.

If ever there was a right to counsel, it would be after formal accusations by the A.D.U. and a determination based upon the evidence presented there.

THE COURT: All right.

The Court rules that the indictment will be dismissed, first, because of the right to speedy trial. The Court finds that, although in prison, the finger of suspicion is upon them to the point where they are put and kept in quasi-isolation. That is comparable to an arrest, which triggers the right to be brought before a magistrate and at least counsel appointed for them. The [66] Court rules that under circumstances of that kind the defendants are entitled to a much more prompt indictment than occurred in the present instance and a fortiori the appointment of counsel.

The Court further finds that their Fifth Amendment rights were violated by the fact that for eight months, while the government was proceeding with its investigation, the defendants were deprived of counsel and thus had no opportunity through counsel to make a comparable investigation on their own behalf.

The Court further finds, as a third reason, that the right—well, I think that covers it. I think the right to counsel here was most important, and I think prejudice has been shown by the fact that an eight-month delay has occurred before counsel was appointed. Memories can dim and undoubtedly have dimmed as to who were present at particular times. Defense counsel just has no opportunity to make the kind of investigation that the government made.

I expect that you will appeal this, Mr. Drooyan.

MR. DROOYAN: Yes, your honor.

* * *

Supreme Court of the United States

No. 83-128

UNITED STATES, PETITIONER,

v.

WILLIAM GOUVEIA, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 17, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.